RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ६] गुरुवार ते बुधवार, एप्रिल १७-२३, २०१४/चैत्र २७-वैशाख ३, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

MEMBER INDUSTRIAL COURT, MAHARAHSTRA AT MUMBAI

BEFORE SHRI S. G. KADAM, I/C. PRESIDENT

REVISION APPLICATION (ULP) No. 106 OF 2002 in Complaint (ULP) No. 155 OF 2002.—Empire Industries Limited, LBS Marg, Vikhroli, Mumbai 400 083—*Applicant V/s.* (1) B. G. Shahi, Mahesh Colony, Chawl No. 2, R. No. 3, Behind Shreeram Talkies, Khade Gadoli, Vithalwadi, Tal. Kalyan, Dist. Thane. (2) The Presiding Officer, 1st Labour Court, Thane—*Respondents.*

In the matter of Revision u/s. 44 of the MRTU and PULP Act, 1971.

CORAM.— Shri. S. G. Kadam, I/c. President.

Appearances.— Shri K. M. Naik, learned Advocate for the Applicant.

Shri N. H. Kantharia, learned Advocate for the Respondent workman.

Order

(Dated 23rd August 2002)

1. The revision application is filed against the Order dtd. 28th June 2002 passed in Complaint (ULP) No. 155/2002 below Exh. 2.

2. The Original Complainant *i. e.* Respondent herein has contended that he filed the Complaint on 27th May 2002 alongwith which the application Exh. 2 for *ad-interim*/interim relief was also filed. According to the Complainant he has rendered about 26 years service as a Watchman with the Respondent and drawing a Salary of Rs. 6000 p.m. He came to be issued with a chargesheet on 22nd October 2001 for alleged misconduct alleged to have been taken place on 18th October 2001. The Complainant was suspended pending enquiry *vide* order dtd. 18th October 2001 on the ground that he has committed misconduct that of refusal to carry out the instructions of Security Officer to be on round duty. The Complainant replied the said letter and thereby denied the allegations. According to the Complainant, he never refused to do any duty assigned to him by his superiors. The Complainant contended that the order of

round duty by the Respondent is false. The Complainant further contended that round duty was not performed by any watchman, but by the Assistant Security Officer and for the first time it came to be introduced without giving any notice of change. A departmental enquiry was conducted in the matter of chargesheet issued to the Complainant. However, the enquiry conducted was not proper. The enquiry was completed on 4th May 2002 and thereafter the Respondent Company issued a letter dtd. 23rd May 2002 alongwith copy of the findings of the enquiry officer claimed to have been perverse. The Complainant further contended that the Management of the Respondent Company examined 2 witnesses in the enquiry. However, the charges of refusal on round duty could not be proved as the witnesses admitted that the Complainant was not assigned the job of round duty on 16th October 2001 and 17th October 2001. The Management, however, fabricated Exh. 10, the duty signature book for 16th October 2001. According to the Complainant, on 16th October 2001 he was not at all assigned the work of round duty. However, when the document was called in the enquiry proceeding, over-writing was appearing in the same. The Original duty-book of the said page was torn. The record was such maintained by the Respondent is false and fabricated. The Complainant in his evidence denided the allegations levelled against him as he never refused to do the work assigned to him. The Complainant contended that the alleged incidence of 18th October 2001 is false and an after-thought. The Complainant further contended that, the chargesheet issued to him is vague and does not consist all the particulars of the alleged misconduct, as well as allegations intended to be proved. According to the Complainant, the chargesheet do not disclose the particulars of the misconduct alleged to be committed by him. The Enquiry Officer failed to show as to why he has accepted the evidence of Management and rejected the evidence of the workman. The Enquiry Officer failed to give any reason as to why the evidence of the workman was disbelieved and why the evidence of management is accepted. The Enquiry Officer, in fact, ignored the admissions given by the management witnesses in the cross-examination. As such the findings of the enquiry officer are perverse.The Complainant has got clean and unblemished past record. The Complainant apprehended that on 17th October 2001 reply to the letter under which findings came to be supplied to him, his services could be dismissed and therefore the Complainant preferred to file the Complaint on apprehension. The Complainant therefore prayed for restraining the Respondent from dismissing or discharging him from the employment pursuant to the chargesheet dtd. 22nd October 2001.

3. The Original Respondent *i. e.* Applicant herein denied indulgance of the Respondent in any act of unfair labour practice, as alleged or otherwise. The Respondent denied all the allegation levelled by the Complainant against the Respondent in his complaint. According to the Respondent, the complaint as well as interim relief application is misconceived on facts as well as at law and therefore, prayed for dismissing the interim relief application on that ground itself. According to the Respondent, the Complainant having been working at Vitrum Class, a Division of the Respondent Company situated at Vikhroli, the jurisdiction lies with the Labour Court, Mumbai and not at Labour Court, Thane. The Respondent further contended that Complainant *interalia* alleged to have been indulged into a serious act of abusing and threatening the security officer with dire consequences as to his life. The Complainant, therefore, has been issued with a chargesheet-cum-suspension order dtd. 22nd October 2001. The charges were elaborately narrated in the said chargesheet. The Complainant was issued with a show cause notice prior to issuing the chargesheet. The reply submitted by the Complainant to the chargesheet was not found satisfactory, therefore, enquiry was conducted in the matter to the said chargesheet by one Mr. S. S. Lad who was an independent outsider. The Complainant was defended by one Mr. K. R. Verma, the Union Representative of Maharashtra General Kamgar Union of which the Complainant is a member. One Mr. D. M. Patole was representing the Management in the enquiry. The Complainant commenced on 1st November 2001 and completed on 4th May 2002. The Complainant having suspended was paid subsistence allowance in accordance with the law since his date of suspension. The Enquiry Officer explained the charges to the Complainant which were duly and clearly understood by the Complainant. The Enquiry Officer explained the procedure of the enquiry to the Complainant. The Management filed the documents in support of the charges and copies of the same were provided to the Complainant.

The management examined 2 witnesses in support of the charges and the same witnesses were cross-examined by the defence representative. The Complainant examined himself in the enquiry and he was cross-examined by the management representative. Every opportunity was given to the Complainant to defend himself at the enquiry, and the Complainant availed the same fully. The Enquiry Officer during the course of enquiry dealt with the objection raised by the Complainant and necessary rulings were given at appropriate stages. The Complainant was given copies of enquiry proceedings and documents during the course of enquiry. Enquiry was conducted fully in conformity with the principles of natural justice and therefore enquiry conducted against the Complainant is fair, proper, valid and in accordance with the principles of natural justice. On conclusion of the enquiry, the enquiry officer submitted his findings and report dtd. 17th May 2002 whereby he held the Complainant guilty of the charges. The said findings were forwarded to the Complainant *vide* Company's letter dtd. 23rd May 2002 for his comments within 3 days on the receipt of the said letter. The Complainant, however, instead of furnishing the comments he sought time for 10 days for submitting his reply *vide* his letter dtd. 25th May 2002. The Respondent *vide* its letter dtd. 25th May 2002 given time upto 1st June 2002 to submit the comments. The Complainant, however, instead of submitting the comments filed the present Complaint. The Complainant engaged into the acts of misconduct of disobedience and insubordination alongwith threatening to the security officer with dire consequences. The misconduct which has been proved in the enquiry is serious and grave misconduct. The Respondent denied the allegation that the instructions of the security officer to the Complainant and other security guards to take round while be was on duty, requires any notice of change. All other security guards and watchmen who have been asked to take round while on duty, are performing the said duty as per the instructions. However, the Complainant alone refused to carry out the said instructions. The findings and the report of the enquiry officer is proper and on the basis of material before him and cannot be perverse. The Respondent denied that the service record of the Complainant was clean and unblemished as he was suspended for one day by way of punishment in the year 1993 for the misconduct of bringing and drinking liquor on the premises of the Company and that there were several Complaints against him and he was warned for the same. The Respondent denied that the Complainant has been made a victim of the whims and fancies of the Respondent. It is, therefore, prayed that the interim relief application be dismissed.

4. The learned Labour Court after hearing the arguments of both the parties, passed the Order below Exh. 2 dtd. 28th June 2002, which has been challenged by the Applicant *i. e.* Original Respondent on the following grounds which are taken without prejudice to one another :—

(a) That the Order passed by the learned Respondent No. 2 Labour Court is *ex-facie* bad-in-law, suffers from total non-application of mind and perverse and therefore requires to be quashed and set aside. This apart, the Labour Court has clearly exceeded the limited jurisdiction conferred on it under the Act and has re-appreciated the material on record at the enquiry and has come to the conclusion which is *ex-facie* perverse.

(b) That the learned Labour Court exceeded the jurisdiction conferred on it under the Act and re-appreciated the evidence on record at the enquiry proceedings, which could not have been done under the Act inasmuch as he has limited jurisdiction to see whether the Company has indulged into unfair labour practices under the items under which the Complaint was filed.

(c) That the learned Labour Court failed to appreciate the fact that the concerned employee flatly refused to do the round duty when asked by his immediate superior.

(d) That the learned Labour Court failed to appreciate that refusal to do the round duty by a Watchman, is a serious act of misconduct which by itself warrant punishment of dismissal as the Watchman is ultimately required to ensure that the property of the Company is safeguarded.

(e) That the Order passed by the learned Labour Court suffers from contradiction inasmuch as the Labour Court in the impugned order observed that the concerned employee refused to do the round duty on 16th October 2001 and 17th October 2001 and despite the refusal to obey the lawful and reasonable order being serious in nature, refrained the Company from taking suitable disciplinary action.

(f) That the learned Labour Court failed to appreciate that since the Respondent No. 1 herein refused to do the round-duty on 16th and 17th October 2001, he was issued a show cause notice by the Management and that being aggrieved of the same, the concerned employee on 18th October 2001, threatend his immediate superior of dire consequences as to his life.

(g) That the learned Labour Court failed to appreciate that there were no reasons for the Respondent No. 1 to give abusive language to his immediate superior.

(h) That the learned Labour Court failed to appreciate that the said incident of giving threats to the life of immediate superior has been informed to the management by him and in the said Complainant, the said superior has clearly recorded the tone and the language that is used by the concerned employee.

(i) That the learned Labour Court failed to appreciate that the language used by the concerned employee directly suggests that he had given threats of murdering his immediate superior Mr. R. K. Singh.

(j) That the Ld. Labour Court has erroneously drawn adverse inference against the Company regarding the incident of 18th October 2001 merely because the threatening words used against the said immediate spperior were not recorded in the chargesheet. The learned Labour Court clearly failed to take note that the Security Officer reproduced the language and the threats given to him in the complaint to the Company, which was forming part of the records.

(k) That the learned Labour Court has erroneously observed that the deposition of Mr. R. K. Singh regarding the incident of 18th October 2001 about the alleged threats, is not clear.

(l) That the learned Labour Court failed to appreciate the limited jurisdiction conferred on him U/s. 7 of the M. R. T. U. and P. U. L. P. Act in a complaint filed under the apprehension of termination of services.

(m) That the learned Labour Court failed to appreciate that the powers under item 1 of Sch. IV of the Act could be exercised only in the event the action taken by the Company is in gross violation of the principles of natural justice and that the punishment to be imposed is shockingly disproportionate to the incident in issue.

(n) That the learned Labour Court failed to appreciate that in the case of Ashok Vishnu Kate V/s. Hindustan Lever Ltd. the Hon'ble Supreme Court has made it abundantly clear that the Labour Courts should be very slow while exercising powers in a complaint filed under apprehension of terminaton of services inasmuch as if the said power is exercised improperly or unjudicially, the same would amount to interfering with the right of the Management to take disciplinary action against the erring employees.

(o) That the learned Labour Court failed to appreciate that the Hon'ble Supreme Court in the aforesaid judgment has further made it clear that in cases where the employer has followed due process of law as required under the Standing Orders, the Labour Court should refrain itself from exercising its powers under the M. R. T. U. and P. U. L. P. Act.

(p) That the learned Labour Court failed to appreciate that in the present case, the employer conducted a full-fledged enquiry in accordance with the provisions of standing orders and moreover, necessary principles of natural justice have also been complied with by the employer in the conduct of enquiry and therefore the Labour Court not to have interfered with the proposed punishment to be imposed by the Company on the erring employee.

(q) That the learned Labour Court committed a gross error of law inasmuch as it has granted the whole reliefs at the interim stage which is not permissible at law.

(r) Having passed an order restrining the Company to take final action of termination, the learned Labour Court has virtually disposed of the complaint thereby leaving no scope for leading any further evidence in the matter.

(s) That the learned Labour Court failed to appreciate that interim reliefs in the final relief could be granted only in the rarest of rare cases and that the present one atleast could not have been said to be a rarest of rare case.

(t) That the learned Labour Court has given under weightage to the long service performed by the Respondent No. 1 here in herein which was not called for and that the learned Labour Court has not considered his adverse past service record, considering the serviousness of the threats of murder given by the concerned employee to his superior clubbed with the fact of disobeying the lawful and reasonable order of the superior.

(u) That the learned Labour Court has erroneously exercised the jurisdiction without holding that the Company *prima-facie* has indulged into unfair labour practices. It is a well-settled principle of law that unless the Court first comes to the conclusion that the Company has indulged into unfair labour practices under any of the items under which the complaint is filed, the Court does not get the power to pass any order much less any interim order.

(v) That the learned Labour Court has erroneously held that the balance of convenience is in favour of the Complainant which is wholly incorrect. The Applicant states that on the contrary, the balance of convenience was in favour of the Company inasmuch as if the said employee continues in the employment, the same will adversely affect the working of the security personnel, moreover, the same will also lower down the morale of the security personnel whom the Complainant had thereatened with dire consequences to his life and that the said security officer would continue to operate under the fear phychocis of revenge by the Complainant.

(w) That the Order passed by the learned Labour Court is contrary to the well-settled principle of law and suffers from total non-application of mind.

(x) That the learned Labour Court has arrived at the concluion which no reasonable and prudent person would have arrived at based on material on record and the laws on the subject.

(y) That the impugned order in *ex-facie* misconceived bad-in-law, *void ab-inition,* illegal and required to be quashed and set aside.

5. It is there fore, prayed as follows :—

(*a*) That this Hon'ble Court be pleased to call for the records and proceedings of Complaint (ULP) No. 155/2002 and after examining the legality, validity and property thereof, quash and/or set aside the Order dtd. 28th June 2002 passed by the learned Labour Court in the said Complaint, being Annexure-"D" hereto.

(*b*) That pending the hearing and final disposal of the present revision application, the effect, operation and implementation of the said Order dtd. 28th June 2002 be stayed and the Labour Court be restreined from further proceeding with the Complaint (ULP) No. 155 of 2002.

6. From the grounds of Revision, the following points arise for my consideration and I have answered against them accordingly :—

Points—

(1) Does the Revision Applicant prove that there is an error apparent on the face of record, which is evident in the Order under revision ?

(2) What order ?

Findings—

Point No. 1.—Yes

Point No. 2.—Please see order below.

Reasons

7. Elaborate arguments have been advanced by the palies. Shir K. M. Naik, learned Advocate for the Revision Applicant argued that the order under revision is bad-in-law. The learned Labour Court has committed error and the findings are perverse and therefore the interference of this Court is necessary. As against this, Kantharia, Advocate for the Revision Opponent has argued that U/s. 44, the jurisdiction of this Court is limited. This Court cannot re-appreciate the evidence on record and he has placed his reliance on a case reported in *2000-(LB 3)-GJX-1768-BOM* (M. K. Bhuvaneshwaran *V/s.* Premier Tyres Ltd. and Aanr.)

8. In the light of the aforesaid submissions and in *view* of the citation relied by the Revision Opponent, I have gone through the Order under revision. While allowing the interim application at Exh. 2 in Complaint (ULP) No. 155/2002, the Ld. Labour Court has not come to a conclusion observing that the Complainant has made out a strong *prima facie* case of unfair labour practice and without holding the unfair labour practice, the impugrned order is passed. Secondly while allowing the said Application Exh. 2, the learned Labour Court has ordered that "the Respondents are hereby directed not to dismiss or discharge the Complainant on the basis of the basis of the chargesheet dtd. 22nd October 2001 and findings dtd. 15th May 2002. However, the Respondents are at liberty to impose any other punishment during the pendency of the present Complaint. " The learned Labour Court should not have passed such type of order because the employer is the best judge to impose the punishments under the Standing Orders applicable to the parties. So this is an error of law. Thirdly, the learned Labour Court has observed that "It appears that, reports which are appearing in the Exh. 8 having not been mentioned in Exh. 3 and no reason has been specified for the same." This observation is wrong one as Annex. 'A' page No. 225 is a report fo Mr. R. K. Singh, wherein he has mentioned the words uttered by the Complainant as follows :—

"Mera naukri chooda kar edher kaum rahta hai. Keese se pala pada hai yeh tum ko malum padega. Tum pe-abhi har phool chadane ka time a gayale hai. Tum ko kaun kimta deta hai woh bhi mai dekhoonga."

Cognizance of this report is taken in the charga-sheet dated 22nd October 2001. It has been also mentioned in the said charge-sheet as follows :—

"It isfurther reported against you that on 18th October 2001 at about 2.00 after receiving the above show cause notice you behaved most arrogantly and rudely with the security officer on duty in his cabin and threatened him of dire consequences. You also went to the factory main gate and started shouting and threatened the Security Officer."

So the learned Labour Court has not taken into consideration the factual facts of the documents. However, while considering the same, the learned Labour Court has wrongly observed. as observed above in the foregoing lines. It is also observed by the learned Labour that "It appears that the Complainant was given opportunity in the enquiry as per the principles of natural justice and he was given to do round duty on 16 October 2001 as well as on 17th October 2001, but he has not done so." These observations mean the learned Labour Court has accepted the factor which was proved before the Enquiry Officer. However, while oberving as regards incidence of 18th October 2001, it has been observed :—

"The Reporter *i. e.* Security Officer Mr. R. K. Singh appears to be not very clear in his deposition about the threats alleged to have been given by the Complainant to him".

This observation is also not proper as I have already observed above in the foregoing lines about the filthy language in roman script. so the revision applicant has proved the error on the face of record in the impugned order. The revision applicnat has also proved the perverse findings secondly the operative order is bad-in-law. Therefore, I find substance in the grounds of revision. The Labour Court has directed the Original Respondent and revision applicant that not to give punishment of discharge or dismissal, but any other punishment. If the punishment of dismissal is not given and as per the standing orders, other than that is given, then the jurisdiction goes to the Industrial Court under item 9 of Sch. IV in case of minor punishment as the Labour Court has only jurisdiction to deal with the Complaints under item 1 only. Therefore, the impugned order is bad-in-law. Hence, I answer the Point No. 1 in the Affirmative and proceed to pass the following Order :-

Order

(*i*) Revision application is hereby allowed.

(*ii*) The order under revision is quashed and set aside.

(*iii*) The matter is remanded back and the learned Labour Court is directed to dispose of the matter on merits on or before 31st December 2002.

(*vi*) No order as to cost.

S. G. Kadam,
I/c. President,
Industrial Court, Maharashtra Mumbai.

Kohapur,
Dated the 23th August 2002.

(K. G. Sate)
Registrar,
Industrial Court, Mumbai
Dated the 9th August 2002.

INDUSTRIAL COURT, MAHARASSTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

REVISION APPLICATION (ULP) No. 51 OF 2000—IN—Complaint (ULP) No. 511 OF 1994.—Godrej and Boyce Mfg. Co-Ltd., Pirojshanagar, Vikhroli, Mumbai 400 079, (2) Shri E. J. Kalwachia, Executive Dimector, Corporate Personnel and Admn., Godrej and Boyce Mfg. Co. Ltd., Mumbai 400 079—*Applicant V/s.* (1) Shri Hoshilaprasad Harsichandra Dubey, C/o. Sarva Shramik Sangh, Neelkant Apt., Near Dr. Bhadkamkar Hospital, Mahagiri, Thane, (2) Judge, 3rd Labour Court, Thane.—*Respondents.*

In the matter of Revision u/s. 44 of the MRTU and PULP Act, 1971.

CORAM.— Shri. V. P. Rothe, Member.

Apperances.— Shri. B. G. Goyal, Ld. Advocate for the Applicants.

Shri. R. Nair, Ld. Representative for the Respondent workman.

Order

(Dated 17th August 2002)

Being aggieved by the Order dtd. 9th Fubruary 2000 in Complaint (ULP) No. 511/94 passed by the 3rd Labour Court, at Thane, this Revision Applicantion has been fild by the Respondent of the original complaint and the Applicant of this Revision Appliation *i. e.* Godrej and Boyce Mfg. Company Ltd.

2. The Original Complainant Shri Hoshilaprasad Harischandra Dubey was in the employment of the Applicant Company. His designation was 'Helper' and date of appointment was 10th March 1974. It was the case of the Original Complainant that the Officers of the Applicant Company took a letter in writing from him. Contents of the said letter were that the Original Complainant is resigning from the employment. This letter was taken from the Complainant by using undue influence and force.This was done in the year 1993. The Original Complainant was sick from 25th June 1994 to 17th July 1994. When on 18th July 1994 he went to resume on duty, he was not allowed to resume. He was told that his services have been terminated. The Original Complainant had got the letter dtd. 19th July 1994 and in the said letter the Applicant Company had informed that the so-called resignation of the Complainant has been accepted. In the Complaint (ULP) No. 511/94 it was specifically alleged by the Complainant that he did not resign from the service and his services came to be terminated illegally, The Complainant was never intending to resign. He did not have any source of income. Then the Original Complainant had approached to his Union and the Govt. Labour Officer and lastly filed the abovesaid Complaint under item 1 (a), (b), (d), (f) and (g) of Sch. IV of the MRTU and PULP Act, 1971.

3. The parties have adduced the evidence in this Complaint and the impugned order passed by the Ld. Labour Court holding that there is no date on the said letter of the resignation. This letter referred that the Complainant had sought his legal dues at the earliest. However, the Complainant did not collect his dues. Hence, had the Complainant been intending to resign from his services with his free will, it was obvious in the normal course, he could have certainly collected his dues. The fact that the Complainant had not collected his legal dues in response to the said resignation itself indicates that he had not given his resignation with free will and hence the Ld. Labour Court has held that the Respondents have engaged in unfair labour practice under item 1 (a). (b), (d), (f) and (g) of Sch. IV of the MRTU and PULP Act and directed the Applicant Company to reinstate the Original Complainant with continuity of service and full backwages *w. e. f.* 22nd July 1994 onwards.

4. Being aggrieved by this Order, the Original Respondent has challenged the same on the gound that the impugned order is based on inference not warranted by the facts and presumptions. The impugned order failed to appreciate the fact that the Resignation letter was received by the Company from the workmen. The Complainant did not file any complaint in writing to the Company against the four officers who had dictated the letter of resignation

to the Compainant. The Ld. Labour Court had lost sight of the fact that the Applicant's witness has deposed before the Opponent No. 2 that the original resignation letter was sent by the Opponent No. 1 to the Applicant Company by Regd. Post A/D and that letter dtd. 19 July 1994 was also issued by the Company to the Opponent No. 1 by Regd. Post A/D. The Officers who are alleged to have forced the Complainant to write the resignation letter had already left the Company 4-6 years back. The Ld. Labour Court failed to appreciate the fact that the onus of proving as to whether the resignation submitted by the Opponent No. 1 was forceful or not lies on the Original Complainant and the Complainant miserably failed in discharging it. Thus the evidence is not properly appreciated by the Ld. Labour Court. Hence, it is prayed that the impugned order be set aside and stayed.

5. I have heard the Ld. Counsels of both the parties at length. I have perused the record and proceedings. The following are the points that arise for my deterimination :—

Points—

(1) Whether the impugned order dtd. 9th February, 2000 is illegal, perverse and contrary to law ?

(2) What order ?

Findings—

Point No. 1.—Yes.

Point No. 2.—Please see order below.

Reasons

6. *Point No. 1.*—At the outset, I questioned to both the parties how this Revision Application came to be filed before this Court as the impugned order came to be passed by the Labour Court at Thane and there are Industrial Courts at Thane. Both of the parties have informed me that in view of the Office Circulars, the Jurisdiction is vested in this Court to deal with the matter. The said circular is produced beferoe me. It is submitted by both the parties that they shall not raise the jurisdictional issue and would like to argue the matter. Hence, it was taken up for hearing.

7. However, the ministerial staff working under me has brought to my notice the Government Resolution dtd. 21st November 1990 in respect of jurisdiction of the Labour Court in the State of Maharashtra. In the said Resolution, it is specifically mentioned that the Labour Courts at Bombay are having jurisdiction of Bombay District (except N. S. and T. Ward), whereas the Labour Courts at Thane are having jurisdiction in respect of Thane, Raigad and N. S. and T. Ward of Bombay Districts. There is also a Government Resolution dtd. 3rd August 1999, where in it is stated that the Industrial Courts Mumbai are having jurisdiction in respect of Bombay city and Bomay suburbs.

8. In the written notes of argument filed on behalf of the Applicant Company at Exh. C-23 it is argued by the Ld. Counsel that the order of the Labour Court is clearly perverse and this Court can exercise its revisional jurisdiction. The preliminary burden of establishing the fact that resignation was obtained from the Complainant by the officials of the Company by force, has not been discharged by the Complainant. Thus the Labour Court had arrived at a conclusion which is not supported by the evidence on record. It is submitted by the Ld. Counsel that unless there is a perversity in the findings of the fact, this Court cannot interfere with the order of the Labour Court, but in the present case, the position is very clear and the evidence on record of this case reasonably read is incapable of supporting the order passed by the Labour Court, Thus the conclusion drawn by the Labour Court on the basis of the evidence is perverse. The Ld. Counsel has also submitted that normally the Revisional Court cannot re-appreciate the evidence, but when the error is committed apparent on the face of record, the approach of the Court will be justified to set right the matters.

9. The Ld. Counsel thus submitted that the order passed by the Labour Court is entirely opposed to the body of evidence adduced before it. The Complainant had stated in his evidence that Mr. Franklyn Sumitra, Mr. Ramprased Tiwari, Mr. Bharucha and Mr. Reddy dictated to him to write down the resisgnation letter without putting the date. The Original Complainant was told by the said officers that if he remained absent from duty, then they would put the date on the resisgnation letter. The names of these officers where not given in the Complaint by the Complainant and for the first time, the Complainant deposed about them. The main grievance that has been made out by the Ld. Counsel of the Applicant is that there is a variance in between the pleadings and the evidence adduced on the record. It is difficult to accept this submission. A party can plead the material fact. It need not require to plead the evidence. Hence, I don't find any force in this submission of the Ld. Counsel of the Applicant.

10. Nextly it is submitted by the Ld. Counsel of the Applicant that the envelope containing the letter of resignation was in the handwriting of the Complainant. He did not file any Complaint against the 4 officers of the Company for forcibly obtaining his resignation. The Complainant had not intimated to the Company about his illness. The Complainant has admitted in his cross exmination that the letter of resignation was written by him only, so also the address on the letter Written by him. The Officer of the Company *viz.* Mr. Franklyn Sumitra was examined and he stated before the Court that the Complainant had forwarded his resignation by Regd. Post A/D from Ulhasnagar and in return the Complainant had received the letter dtd. 19th July 1994 sent by the Company for acceptance of his resignation. Thus, there was no evidence on record to show that the letter of resignation was obtained in advance from the Complainant and despice of that the Ld. Labour Court has held that as subsequently the dues were not accepted by the Complainant, the resignation might not have been given by him with free will. The Ld. Counsel has argued that instead of looking into the material facts of evidence, whether the Complainant has resigned on his own, the Ld. Labour Court has erred in drawing the inference that only because the dues are not taken by the Complainant, he might have not resigned.

11. I have closely perused the contents of the Complaint filed by the Complainant. It is specifically pleaded in para 2 (c) of the Complaint that the Respondent No. 2 Shri E. J. Kalwachia, Executive Director and some other officers of the Company also took a letter in writing from the Complainant by using undue influence and force containing a statement that the Complainant resigns from the employment and this was taken somewhere in the year 1993. The Complainant was working in the Company thereafter. However, when the Complainant could not go for work due to illness and medical treatment during the period 25th June 1994 to 17th July 1994 and thereafter when the Complainant went to report for duties on 18th July 1994, he was not allowed to resume work. Thus the Complaint came to be filed with a specific pleading that the resignation of the Complainant was brought by using undue influence and force. It is a general principle of law that the person who is alleging of practising of undue influence and force, requires to prove it. It is self-evident from the record of the Complainant's case that with such specific accusations, the Complaint of unfair labour practice was filed before the Ld. Labour Court. The evidence on record, the findings of the Labour Court, as pointed out above and the inferences that came to be drawn by the Ld. Labour Court is confined of the fact of not giving resignation by the Complainant as subsequent dues were not collected by him. Instead of drawing such inference, it was necessary on the part of the Ld. Labour Court to give the specific finding on the point whether the Complainant was intending to resign or some writing given by the Complainant in the past was used against the Complainant by the Company and the said writing was obtained from the Complainant by using undue influence and force. Had there been such a finding with the reasoning, the error of law would not have been account in the impugned order. Thus whether there is any misuse committed by the Respondent regarding the statement which is taken from the Complainant on exeecing undue influence and force, was to be determined by the Ld. Labour Court. It appears that the Ld. Labour Court was very much influenced by the fact that as there was no collection of the subsequent legal dues, there was no intention on the part of the Complainant to resign. That may be concent but finding or maked fact is recently.

12. The Ld. Counsel of the Opponent has argued that the jurisdiction of this Court is very limited u/s. 44 of the M. R. T. U. and P. U. L. P. Act. Even if the order is erroneous on facts, the Revisional Court cannot interfere and re-appreciate the evidence. It is not the grievance of the Applicant that the order of the Labour Court came to be passed without jurisdiction or it wholly committed an error of law. The entire crux of the argument of the Applicant is on the appreciation of evidence led. before the Trial Court and it was suggested by the Applicant that the Labour Court ought to have appreciated the evidence in an manner pointed out by the Ld. Counsel of the Applicant as per page No. 7 to 10 of the Written notes of arguments at Exh. C-23. It is not the relevant question for consideration of the revisional Court as per the Say of the Ld. Counsel of the Opponent. The Ld. Counsel further submitted that the order of the Labour Court clearly reveals that it has considered all the rival contentions and has given the reasons for arriving at the conclusion. There is no endorsement of acceptance of the alleged resignation letter and the very fact that the workman has not come forward to collect any legal dues from the Company is sufficient ot hold that there was no resignation given by the Opponent at his free will, In support of his Say, the Ld. Counsel relied on the following citations :—

(*i*) 1995 I CLR page 854 (Vithal Gatlu Marathe *V/s.* Maharashtra State Road Transport Corporation and ors.)

(*ii*) 1997 I CLR page 868 (kirloskar Cummins Ltd. *V/s.* Subhash Shripati Darekar and Ors.)

(*iii*) 1983 (46) FLR page 244 (Mahila Griha Udyog) Lijjat papad *V/s.* Kamgar Congress and ors.)

(*iv*) 2001 I CLR 1073 (Tulsiani Chambers Premises Co-op Society Ltd. *V/s.* Shrikant V. Gawas.)

(*v*) 2000 II CLR 865 (M. S. R. T. C. *V/s.* Kantrao S/o. Gyanbarao Dabhale)

(*vi*) 2000 III CLR 99 (Gajanan S/o. Shamrao Thakre *V/s.* Maharashtra State Road Transport Corporation, through its Divisional Controller, Parbhani Divn.Parbhani).

13. It is an accepted position of law that as an Appellate Authority, this Court cannot take upon itself the task of re-appreciating the entire evidence to find out whether the decision of the Labour Court was correct or not. There is no doubt about the fact that there is a limited jurisdiction vested in this Court U/s. 44 of the M. R. T. U. and P. U. L. P. Act and the finding of the fact cannot be overturned by this Court though it is erroneous and exeeceding the parameters of the revisional jurisdiction. It can be safely said so far as the present case is concerned that if the pleadings of the parties and the evidence on record reasonably read is incapable of supporting the order, an account of pleading then it can be set aside. If there is an error apparent on the face of the record, the order can be set aside. On the basis of the strength of the evidence, the Ld. Labour Court has drawn the inference that as there was no acceptance of the dues after the resignation by the concerned workman, he might not have resigned. Admittedly the Ld. Labour Court was dealing with the Complaint of unfair labour practice which was made before it with a specific accusations, as pointed out earlier that by using undue influence and force, some statement with the contents that the Complainant resigned from the employment was obtained from the Complainant What ever decision is given by the Law Court, it must be in answer to the material issues before it. If the order of the Court is without reasoning much less Lack in proper reasoning, it would be an error apparent on the fact of the record. If such an error is there. the parties must be given an opportunity to rectify the same by remitting the matter before the Ld. Labour Court with a direction to give an opportunity to both the parties of lead the additional evidence, if any and to dispose of the matter within the stipulated period. In view of this, it is a fit case to pass such an order. Without appreciating the evidence on record on the baiss of the pleadings of the Complainant and the order passed by the Ld. Labour Judge, It can be said that the reasoning of the Labour Court ought to have been given properly in support of the order on appreciating the evidence before it.

14. In the light of the pleadings between the parties, the questions as to whether resignation letter in writing from the Complainant was taken by using undue influence and force, whether it was taken in the year 1993, Whether the Complainant could not go for work due to the sinkness and medical treatment being a patient in Vishal Diagnostic Centre during the period from 25th June 1994 to 17th July 1994 and thereafter as a result of which this letter was used as resignation given by the Complainant, are required to be decided. It was specifically pleaded by the Complainant that he never intended to resign from the employment, As per para 2 (e) of the Complaint. There is no finding by the Labour Court on the specific fact that the Complainant was not intending to resign at all. If such is a situation, it is inevitable to send back the record and proceedings before the Labour Court for deciding it in a proper manner. It is equally made clear that there is no reason to unturn the finding and the inference drawn by the Labour Court that the Complainant had not collected the legal dues in response to the said resignation, indicates that he had not given the resignation with free will. Hence, I answer Point No. 1 accordingly and deem it proper to pass the following Order :—

Order

(*i*) Revision Application (ULP) No. 51 of 2000 is hereby allowed.

(*ii*) The order dtd. 9th February 2000 passed by the 3rd Labour Court, Thane in Complaint (ULP) No. 511 of 1994 is hereby set aside.

(*iii*) The matter is remanded back to the 3rd Labour Court, Thane and the said Court is directed to decide the said Complaint within a period of six months from the date of receipt of the record and proceedings, after giving opportunity to both the parties, and on the basis of the pleadings between the parties and the evidence adduced by the parties, without considering any observations made hereinabove.

(*iv*) Parties to appear before the 3rd Labour Court, Thane on 11th September 2002 at 11 a. m.

(*v*) R. and P. be sent back immediately.

V. P. ROTHE,
Member,
Industrial Court, Maharashtra, Mumbai.

Dated the 17th August 2002.

(Sd/-)
K. G. SATHE,
Registrar,
Industrial Court, Mumbai
Dated the 27th August 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

REVISION APPLICATION (ULP) No. 216 OF 2001.—(1) Shri Shankar T. Chougule, (2) Shri Premnath L. Sharma, (3) Shri Bhaskar T. Kardel, (4) Shri Prsbhakar G. Kadu, (5) Shri Michael L. Parmar, C/o Bharatiya Kamgar Sena, Shivsena Bhavan, Shivaji Park. Dadar, Mumbai 400 028—*Applicant V/s.* (1) M/s Lintas India Pvt. Ltd., Express Towers, 15th floor, Nariman Point, Mumbai, (2) Mrs. Sujata Charian, General Manager (HRD and Pers) M/s Lintas India Pvt. Ltd., Exprese Towers, 15th floor, Nariman Point, Mumbai, (3) Mr. Majour Zha, Contractor, M/s Business Aide, 9, Anand, Plot No. 424, C. D. Marg, Khar, Mumbai.—*Opponents*

CORAM.— Shri P. B. Sawant,, Member.

Apperances.— Shri S. A. Sawant, Adovcate for the Applicants.

Shri Ovalekar, Advocate, for Respondents.

Judgement

1. Being aggrieved with the order passed below Ex. U-2 by the 6th Labour Court on 30th October 2001, the Original Complainant have preferred this Revision and claimed for setting aside the order passed by the Trial Court and consequently allow the application Ex. U-2 and the prayers thereunder. The facts which gave rise to the present Revision can be stated in nutshell as below.

2. All these Complainant have filed respective complaints before the 6th Labour Court under Section 28 of the M. R. T. U. and P. U. L. P. Act under items 1 (*a*), (*b*), (*d*) and (*f*) of Schedule IV. The Respondent No. 1 is engaged in advertising business for last 30 years and is employing more than 600 employees in different categories. The services of these respective Complainanants were transferred by Respondent No. 1 to other Respondent without referring to their long standing service rendered for the Respondent No. 1 company. The compaint bearing No. 1161 of 1989 was filed in the Industrial Court. The Industrial Court passed an order directing Respondent No. 1 company to allow the concerned employees and provide them the service conditions and benefits. A Writ Petition No. 262 of 2000 was preferred where in the order of the Industrial Court was confirmed. An Appeal is preferred before the Division Bench of the Hon'ble High Court and the order passed by the Hon'ble High Court was stayed. The order of *status quo* in respect of the service conditions of the employees was also passed. However, the services of the employees are being terminated orally on 6th July 2000. The union approached the Respondent by letter and it was responded by the Respondent on 14th July 2000. It is the contention of the Complainant that they are entitled for interim relief pending final decision of the Complaint.

3. The application was resisted by the Respondents contending *inter alia* that the averments raised in the application are false and frivolous and the same is liable to be dismissed. It is pointed out that all these Complainants were employed through the Respondents No. 3. Therefore, the contractors' labourers cannot claim any relations with the principal employer. Hence, it is contended that no illegality has been caused. The directions of the Industrial Court to the Respondents No. 3 for regularisation of the employees with the Respondents No. 1 are being challenged in the Writ Petition and the Writ Petition was rejected. In Appeal, the stay order has been granted and, therefore, the termination of the services of the Complainants have taken place with the hands of Respondents No. 3. The Respondents No. 1 has no work available at present moment to offer it to the Complainant. Besides the reruitment has already been effected to do the work of these present Complainants through the Respondents No. 3. Since the contract with the Respondents No. 3 has been terminated by the Respondents No. 1, the services of these Complainants come to be dispensed with by the Respondents No. 3. On all the contentions and averments, it is prayed that the application be dismissed with costs.

4. After considering these facts, the learned Trial Court has given reasoned finding and ultimately came to the conclusion of rejecting the appliccation Ex. U-2. The rejection of the application has made these Complainants to prefer a revision under Section 44 of the M. R. T. U. and P. U. L. P. Act. It is contended that the order passed by the Trial Court is without application of mind. It is an outcome of misleading of facts and misapplication of law. It is prayed that this Court should interfere in the matter and set aside the order passed by the Trial Court.

5. The Complainants by this common Revision Application have contended that the order deserves to be set aside bacause the conclusion drawn by the Trial Court is against the available material before the Trial Court. The Trial court has drawn a wrong conclusion that no *prima-facie* case has been proved. The Trial Court has not given proper weightage to the facts on record. It is pointed out that the Trial Court has failed to appreaciate that the termination of services of the Complainants is for non-existing reasons. It is also pointed out that the findings given by the Trial Court are inconsistent. It is pointed out that the Trial Court has failed to maintain the *status quo* of the said order. The Agents should not have been made in the then prevailing position. But this particular fact has not properly been considered by the Trial Court. With this and other grounds, it is prayed that the legality and propriety of the order passed by the Trial Court be considered and the Revision Application be allowed.

6. As against this, the original Respondent who is Opponent in this Revision Application has supported the order passed by the Trial Court and prayed for the dismissal of the Revision Application.

7. On these averments, following points arise for my determination :—

(1) Whether the order passed by the Trial Court is legal and proper ?	Affirmative.
(2) Whether any interferene in the order passed by the Trial Court is required with the hands of this Court ?	Negative.
(3) If yes, to what extend ?	Does not arise.
(4) What order ?	As per final order.

Reasons

8. Point No. 1.—The Complainants have added the Contractor as Respondent No. 3 and the Respondent has consistant stand that the employees like the Complainants are being the contractor's employees. The applicability of the observation of Hon'ble Supreme Court, therefore, can be a question before the Trial Court to construe the position of these employees. Therefore, the observation of Trial Court if seen, the position has been made clear by the learned Trial Judge so far as the status of these Complainants are concerned together with the fact that these persons are facing the matter before the Hon'ble High Court before Hon'ble Division Bench.

9. The Complaint before the Industrial Court bearing No. 1161 of 1989 came to be decided in favour of the Complainant Bhartiya Kamgar Sena against the Respondent No. 1 and Others. The declaration of following of unfair labour practice within the meaning of items 3, 5 and 9 of Schedule IV of the M. R. T. U. and P. U. L. P. Act has been given by the Industrial Court and the Respondents were directed to desist from continuing the said unfair labour practice and by way of consequential relief. the Respondents were directed to provide service conditions and benefits of permanent employees. The Writ Petition No. 262 of 2000 decided on 22nd March 2000 resulted into order of dismissing the said Writ Petition. Hon'ble Division Bench while disposing of the Notice of Motion, ordered to Maintain *Status quo.* Thereafter, when the termination of the services of the employees at second phase, there were exchange of notices between Bhartiya Kamgar Sena and the company. In the reply, to the notice, through Advocate dated 14th July 2000. It has been made clear that the operation of the order passed by the Industrial Court was stayed by the Division Bench and simultaneously denied that there is a termination of service of any of the individual employees. On the back drop of these instances as evident from record. learned Trial Judge has taken a recourse of the same and has observed in para 7 page 6 of his observations about the termination of services but further has observed that whether such termination pending the Appeal before the Division Bench is legal or illegal is under consideration of the Hon'ble Division Bench of the Hon'ble High Court. Thereby the Trial Court has refrained himself from passing any order so far as termination is concerned. The Trial Judge has also referred that since the matter is sub judice before the Hon'ble High Court, the legality of the termination order cannot be tested before him and also refrained

himself from expressing any opinion so far as alleged termination is concerned. In the given circumstances, Shri Sawant learned Advocate for the Applicants has conceded the position that these employees are supposed to approach the Division Bench and raise the dispute so far as their termination is concerned. The facts at this juncture needs a clarification because so called termination of these Complainants came to be on record after the order of the Industrial Court in the earliar complaint filed by these Complainants. Therefore, till the termination was materialised, these Complainants were working with the Respondent No. 1 and under the order of Industrial Court, they were under order of getting permanency in their services. However, the cards seem to have been changed and instead of giving benefits of permanency, these employees are seen to be out of employment, therefore, rightly has to be considered that the issue before the Trial Court was of the termination of employment of these employees after the order of parmanency and not otherwise.

10. While sitting in Revision, the Complainants also found to have resorted to pending Appeal before the Hon'ble Division Bench and the same has been reiterated before me expressing to take up this matter of termination before the Hon'ble Division Bench. Though expression on bahalf of the Complainants appears to be strange but has been raised by the Complainant. Therefore, I have to dispose of the Revision Application on the basis of the submissions of the Revision Petitioners themselves.

11. The Trial Court appears to be under orders of the Hon'ble High Court and the Industrial Court and thereby being overcautious sence has refrained himself from passing any order of remark so far as termination is concerned. The straight jacket formula made applicable by the Trial Court of refusing to grant relief under Ex. U-2 has caused a concerned in this Revision.

12. I do not intened to criticise the order of the Trial Court so far as the facts on record are concerned but the Trial Court should have construed the fact of termination which was after getting the order of permanency and, therefore, could have scrutinised the matter independently. Now when the matter is pending before the Hon'ble Division Bench, is restricted only to grant of permanency and not pertaining to the termination of employees as well as for their being the employees of contractor or of the Respondent No. 1 Since surprisingly, the Revision Petitioners themselves have accepted the position to approach the Hon'ble Division Bench by adding themselves in the Petition with their prayers with a view to cross the hurdle of this Revision and for reaching the next stage. Therefore, in the changed circumstances, I have found it better to hold that there was a scope at this juncture under Section 44 of the M. R. T. U. and P. U. L. P. Act for these Complainants. Therefore, while sending back the matter, it will have to be clarified that the matter which was raised before the Labour Court is having a cause of action accured after filing the earlier complaint in the Industrial Court for seeking the permanency. Therefore, on a different cause of action, the Complaint pending before the Labour Court shall be dealt with expeditiously to find out the legality of the termination order and other points raised in the Complaint. With this discussion, I have given my finding to the points accordingly and pass the following order :—

Order

(*i*) The Revision Application is hereby dismissed.

(*ii*) The Record and Proceedings called from the Trial Court be sent back forthwith.

(*iii*) The parties are directed to appear before the Trial Court on 17th September 2002.

(*iv*) No order as to cost.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Dated the 7th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai
Dated the 6th September 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 115 OF 1988.—Kamgar Utkarsha Sabha, Amneshwar Niwas, Parleshwar Road, Vile Parle (East), Bombay 400 057.—*Complainants Versus* (1) M/s. Institute for Design of Electrical Measurement Instruments, Tatya Tope Marg, Sion, Bombay 400 022, (2) Shri P. K. Krishna Murthy, Principal Director, M/s. Institute for Design of Electrical Measurement Instruments, Tatya Tope Marg, Sion, Bombay 400 022.—*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri A. P. Kulkarni, Advocate for Complainant.

Shri S. S. Acharekar, Advocate for Respondents.

Order

The Complainant has filed the complaint against the Respondents alleging that both of them have committed unfair labour practice under Item-9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971. The facts which gave rise to the present litigation can be stated as follow.

2. The Complainant is a trade union and the employees of Respondent No. 1 are the members since June, 1986. A reference was pending before the Industrial Tribunal presided over by Shri S. M. Limaye who gave a final award on 30th July 1987. The Award was published on 13th October 1987. The union thereafter addressed a letter to the Respondent for implementation of the award but there was no response, to the letter as well as to the subsequent correspondence. Thereafter in the meeting, the Respondent No. 2 informed that he will not implement the award of the Industrial Court in Reference (IT) No. 167 of 1983 and also that he will not give statutory weekly off to the workmen. According to the Complainant, the Respondents have decided to commit a breach of award.

3. Another Reference (IT) No. 168 of 1983 was also decided by the said Tribunal by which, it was directed to re-organise the employees' wages deducted on 28th November 1982 and 4th December 1982 and also to pay overtime to those who have worked on 29th December 1982. According to the Complainant, the action of the Respondent is not implementing the award is an unfair labour practice within the meaning of Item-9 of Schedule-IV of the Act.

4. By way of amendment, the Complainant amended the complaint by adding para 3(a) and pointed out that the change introduced in the working hours by the respondent by cancelling the Saturday off notified by the management. The said change is illegal and improper and the Respondents were directed to withdraw the same unconditionally. The employees are required to work 6 days in a week. The circular dated 28th December 1982 has to be treated as illegal by virtue of the award given by the Industrial Tribunal. About 97 employees have worked on Saturdays excepting second Saturday during the intervening period. The award given is conclusive and final. Subsequently, the Respondent have implemented the award on 28th February 1988 for the period 16th October 1987 to 28th February 1988, by paying wages to the workmen at twice rate of their normal wages. It is pointed out that the workers are entitled to the amount of Rs. 14,99,400. With this and other grounds, it is prayed for declaration and consequently direction to the Respondent to give weekly off and to pay the amount to the employees who have worked on Saturdays in between 1983 and 1987.

5. The Respondent has resisted the contentions by filing written statement Exh. C-4 denying all the adverse allegations therein contending *inter alia* that the application is false and frivolous. It is the contention that this Court has no jurisdiction to decide the complaint as the appropriate Government in respect of the Respondent institute is the Central Government and not the State Government. The Institute is owned by the Central Government. The Institute is governed by the Governing Council which is formed by Ministry of Government of India. Therefore, the complaint is not maintainable. It is contended that the Governing Council in the 32nd meeting on 14th May 1982 passed a Resolution increasing the working days from 5 days to 6 days in a week and accordingly, a circular dated 28th December 1982 was issued. Therefore, even though the employees called for 6 days in a week, there was much change in the number of working hours and they will not require to work more than 48 hours in a week.

6. It is the contention that by looking into the problems in the city of Bombay, a circular was issued introducing 5 days of working in between 9.15 a.m. and 5.15 p.m. The earlier to that working hours were from 9.30 a.m. to 4.30 p.m. with half an hour lunch break. The tea was served at the place of work so that the employee should not leave the place of work. However, for the workshop, introduction of 6 days of work was introduced instead of 5 days week in Bombay. This was to enable the maximum number of customers for rendering the service to them. Therefore, there was hardly any change in the number of working hours and the change was brought into effect from February 1983. Therefore, the demand of the Complainant is infractuous, illegal and unjustified. It is pointed out that the award of the Industrial Tribunal was to withdraw the circular dated 28th December 1982 and to revert number of working hours existing prior to 1st February 1983. There is no direction declaring the entitlement of the employees to receive the wages twice the rate of the normal wages for working on Saturdays. Merely by cancelling the circular, it will not automatically grant the benefits of overtime wages at double the rate for the additional days worked by these employees.

7. It is interpreted by the Complainant that the award of the Industrial Tribunal is nothing but to direct that there will be 5 days week and nothing more than that. The illegality alleged is not towards the actual hours of work required to be put in a month. There is no increase or decrease of actual hours of work to be put in a month. The Respondent has cured the effect reverting its own timing of the work prior to June 1982. The Complainant has failed to justify how the employees without working additional hours become entitled for the overtime payment and that too for the additional remoneration. The payment made by the Respondent for the period between 16th October 1987 and 28th February 1988 was as per the order of the Hon'ble High Court. The Department of the Respondent has been exempted from the provisions of the Factories Act. Therefore, the Institute has an authority to have its own timing of work and number of hours. With these facts, it is contended that the claim for additional wages is not legal and proper and the Respondents are not liable to pay any amount. Therefore, it is prayed that the complaint, be dismissed.

8. On these rival submissions, issues are framed as follows :—

Issues	*Findings*
(1) Whether the Complainant has proved that the Respondents have committed unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?	Affirmative.
(2) Whether the Complainant is entitled to the relief of declaration as prayed for ?	Affirmative.
(3) To what consequential relief the Complainant is entitled to ?	As per final order.
(4) What order ?	As per final order.

Reasons

9. *Point No. 1.*—This complaint was earlier decided and the matter was taken up to Hon'ble High Court in Writ Petition No. 143 of 1996. During the pendency of the Writ Petition, a Contempt Notice of Motion was moved and in the matter, Hon'ble His Lordship suggested that the employees shall be paid their wages from 16th October 1987 to 28th February 1988 without prejudice to the contentions of the Respondent. A scheme was prepared for calculating the excess work which these workmen have done during the impugned period and for the said period, it was directed that they should be paid double the wages than the normal. So far as period from February, 1983 to October, 1987 is concerned, Hon'ble His Lordship has found that no clear case for doing excess work has been spelt out and thereby for the period in between February, 1983 and 16th October 1987, a complaint has been remanded back for retrial with an opportunity to the Complainant to make amendment to the respective pleading. By virtue of

these considerations, the order passed by my learned predecessor came to be set aside and the matter has been remanded back to this Court for retrial only with regard to the claim in the complaint in between 1983 and 1987. Having noted these facts, when the matter came up before this Court, the necessary amendment was carried out. The issues were framed accordingly and the matter was proceeded ahead.

10. Referring to the allegations of committing unfair labour practice under Item 9 is concerned, admittedly, the two references bearing Reference (IT) No. 167/1983 and 168/1983 were pending before the Industrial Tribunal and came to be decided in favour of the workmen. The award was published and it has become final as till this date, there is no interference in any of the terms of the award. Therefore, looking into the wording used under Item 9 of Schedule IV as "failure to implement award, settlement or agreement", it is clear that those are pertaining to Respondents' not withdrawing the circular as well as not paying the wages on which days, the employees have worked.

11. In pursuance of this, oral evidence was allowed to be led and one Shri D. A. Sawant has led his evidence on behalf of the Complainant contending *inter alia* that the actual implementation of the award was February, 1988. The subject matter of the award was changed in working hours and the notice dated 28th December 1982 was pertaining to the said change. It is the contention of the witness that in between 1st February 1983 till 15th October 1987 barring second Saturday as a weekly off on all other Saturdays, the employees have worked but no wages being paid to them and accordingly, calculations have been submitted as worked out. On this set of contention, the entire cross-examination carried out is referring to the timing which was observed when there was 6 days week was followed. The timing from 9.30 a.m. to 4.30 p.m. with half an hour lunch break. The witness was not in a position to specify as to whether these working hours were determined by the Governing Council. After completing the 6 days week to 5 days week, the timing was changed to 9.15 a.m. to 5.15 p.m. with half an hour lunch break. Much hue and cry has been made during the course of the cross-examination about employing not protesting such changed about the working hours as well as calculations of working hours during the span of 6 days week and 5 days week. To clarify more, it has to be specified that the Respondents are of the view that even if 5 days week has been taken into consideration, the working hours are not being changed. Therefore, it cannot be said that the employees have worked more. On these considerations, my attention was brought to the timing of the working hours which according to the Respondent, postulates that the working hours are being kept intacted irrespective of the fact that the timing is changed.

12. The suggestion that the employees never have protested for change in working hours has been denied. However, he admits that there is no settlement or agreement pertaining to the timing of the shifts and working hours. A suggestion was also given that the change in working hours and timing of shifts was as per the recommendation of the Governing Council. It is also tried to emphasis that circular dated 28th December 1982 was issued by the Governing Council and, therefore, from 1st February 1983, shift duty and timing was changed. The applicability of Factories Act has also been discussed with the witness during the course of cross-examination. I have referred to all these aspects in the cross-examination. To point out that the terms of award seem to have been divulged by such cross-examination. The allegations of following of unfair labour practice are pertaining to not implementing the Award to its strict sense. Therefore in my view. Once the award is given the terms thereunder cannot be interpreted conveniently. The award has to be followed as it is. Therefore, even a curserary look to the award and the material placed before this Court is concerned, it will reveal that the Respondent has refused to change the system of allowing weekly off on Saturday as well as change in the working hours. This postulates that the Respondents are under the impression that since the duty hours are changed, it cannot be said that the ratio of 32 hours a week work-load has been foregone by the Respondent. In other words, the interpretation of the terms of the award is not permitted when the question of its execution case before the Court. Therefore, even if the facts are much stretched by the Respondents during the cross-examination, the fact remains that the effect of circular which was turned down by the order of the Industrial Tribunal was not followed.

13. Coming out of the purview of the said curserary look to the averments as discussed above, the major and prominent aspects require to be looked into is whether the duty hours really being changed or not or whether the Saturdays keeping as working days will be changing implication or effect of the award is also required to be taken into consideration. This process is essential because though we can have a curserary look to the matter, and in such matter of non-implementation of award, which has become final, the same needs to be penetrated more to rule to the possibility of following of unfair labour practice within the meaning of Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

14. The evidence of the Principal Director of the Institute Exh. C-18 specifics the role of the Respondent No. 1 so far as reduction in duty hours or fixing the 5 days a week. According to Shri Ramani, the Institute works in shifts so far as certain departments are concerned. He asserts that all the departments are working uniformly between 9.00 a.m. and 5.30 p.m. While the first shift starts from 6.15 a.m. to 2.15 p.m. and second shift starts thereafter from 2.10 p.m. to 10.10 p.m. and the general shift remains at the usual time of 9.00 a.m. to 5.30 p.m. Prior to 1st February 1983, such was not a timing of the workshop and in the general shift. It has been specifically pointed out that for the purpose of safety, Factories Act is applicable. He has pointed out that after the award the Institute reverted to 5 days week from February, 1988. The workers are working one hour more and were paid the wages as per the single rate. He has also pointed out that there is no agreement of paying double the rate.

15. The recommendation of the Committee constituted by the Principal Director to increase revenue of the Institute dated 19th January 1994 is produced by the union *vide* Exh. U-12. Clause (7) deals with overtime. The committee has uniformly recommended the introduction of paying overtime facility to achieve the revenue target on the experimental basis. The rate of overtime has been decided to adopt as revised rate of overtime allowance as being paid to Central Government employees. The calculation and procedure has been given under the said recommendation which recommends the working on Saturdays also.

16. This has taken me to refer to Exh. 14 which is a circular dated 7th June 1986 issued by the Principal Director as it specifies that to allow double overtime to the workers in the workshop when they worked for more than 9 hours on any day or for more than 45 hours in any week. The representatives of the I.D.M.I. Employees' Union have agreed to direct the workmen to work overtime whenever necessary in the workshop. Exh. U-13 and Exh. U-14, therefore, clearly postulates the notion of paying double overtime besides by virtue of Exh. U-13, the concept of giving overtime has been sanctioned and approved. On this set of facts, the submission of the Respondents needs to be construed.

17. Learned Advocate Shri Kulkarni has submitted that this Court needs to concentrate on the final order given by the Tribunal in the Award. He has specifically pointed out that the change introduced by the circular dated 28th December 1982 is illegal and the management was directed to withdraw the same unconditionally. These are the positive sections of the union when it has noticed that the Respondent has not responded to the said direction especially the circular dated 28th December 1982. Inspite of Respondents' giving Saturday as weekly off from first Saturday of March, 1988, the period earlier to that when these workers have actually worked on Saturday in between 1983 and 1986 has not been considered by the Respondent for paying them their overtime wages. Hence I found that this prominent fact requires to be reckoned at this juncture because whatever being implemented by the Respondent is only for a limited period that too on the order of Hon'ble High Court in Writ Petition.

18. In the situation, it is very clear that there cannot be any second opinion so far as the workers working on Saturdays. Only question is that of paying the wages as per the award. Though the recommendations by the Committee are espoused the cause, the same cause seems to have not been satisfied and, therefore, the award cannot be said to have been implemented to the full extent. The admission of Shri Ramani that the award was implemented with prospective effect itself is sufficient to come to the conclusion for non-implementation of the Award. The overtime allowance as being calculated under Exh. U-13 is an example the basis

of the same is that of working 40 hours a week, then overtime is payable to them. 8 hours work on Saturday has been considered for calculation of overtime even in the example given by the Institution under Exh. U-13. This fact indicates that the working on Saturday's are required to be calculated because the directions in the award were to curtail the practice but the work was already performed by the employees on Saturdays. If this fact is reckoned strictly, then it will reveal that the calculation made is cogent and is in consonance with the work done beyond the period of 40 hours a week by these employees.

19. *Point Nos. 2 and 3.*—Hon'ble Apex Court in a case of *M.D.N. Panikar and Others* V/s. *S. A. I. L. and Another, 1987 (1) SCC-63* has also considered of doing a overtime by the workers of one department who were not getting the overtime though the workers in the other departments were getting the overtime. Hon'ble Apex Court directed that $1^{1}/_{2}$ time of the normal rate of the wages be paid to those workers also. The assertion pertaining to the declaration is concerned in the elaborate discussion so far as point No. 1 is concerned, this Court has already come to the conclusion of non-payment of overtime. The point was pertaining to the payment for which the award was passed. The awards definitely covers the period after issuing the circular dated 28th December 1982. The implementation of the circular was scrupulously followed. Therefore, from 1983 onwards, the employees were doing the work on Saturdays which refers to the work beyond 40 hours a week. Having regard to this factual aspect, once it is transpired that the wages double the rate of normal rate of wages are not being paid to the workers, then those itself will reflect non-implementation of the award and, therefore, the Complainant union is obviously entitled for the declaration as claimed for.

20. So far as the consequential reliefs are concerned, the members of the Complainant are entitled for the overtime wages as being calculated by the union and submitted before the Court. The calculation is by considering the basis of 40 hours a week as working hours. Therefore, I do not find any hitch in the calculations.

21. It is the contention of the Respondents that the order passed by the Chairman though was challenged by the union, the Tribunal presided over by Shri S. M. Limaye has found substance in the contention of the union and thereby branded the said action of the Chairman as illegal and improper and directed to strike it down. The Respondent disagrees with the contention of the union pointing out that in the meeting of Governing Council, there is a decision of reverting back of 5 days week and by reverting back, the daily working hours was increased by half an hour. This was held in the meeting of 25th February 1988. This position has been compared by the Respondents with the position in between 1983 and 1987. It is pointed out that while working as 6 days a week, the employees used to work half an hour less per day and for which, no wages were deducted. In my view, the comparison as stated by these employees cannot come to the rescue of the Respondent. The interim relief order was passed by this Court and thereafter the decision of reverting back original 5 days a week has been taken. Therefore, as per the said decision, the workers might not be working 6 days a week but they are doing the work for the earlier period by construing 6 days a week and by working on every Saturday has remained as it is. The decision in the meeting held on 16th February 1988 does not have any reference to such earlier period of service rendered by there workers. Therefore, I have found no force in the contention of the Respondents.

22. Another submission of the Respondent that this Court has no jurisdiction to interpret the award under Item 9 is also very strange because this Court has abundantly made clear in the earlier discussion that the terms of the award are to be taken into consideration with its plain meaning and not by interpreting the same. Therefore, in a plain reading of terms of award, it is very clear that overtime wages are not being paid and, therefore, it amounts to breach of settlement. The question of Sec. 33(C) (8) still also not arises here, in the context of the above set of facts. The reiteration of the Respondent for not paying the overtime wages appears to be on the ground that there is no increase in the working hours. It is their contention that the employees are monthly rated employees. However, in my opinion, it has to be borne in mind that the employees who were working in the establishment considering 5 days week

and comprising the total working hours. Once they have worked for 8 hours more having worked on Saturdays, then there being a monthly rated work will of no avail and excess work done by them on 6th day in a week will have to be construed as the work additionally done by these employees. This conclusion has been drawn because the Tribunal has turned down the circular of 1982 and termed it as illegal. The illegality, therefore, can only be cured by compensating these workers with the overtime wages.

23. Shri Acharekar learned Advocate for the Respondent has further vehemently submitted that the award does not show that the amount of overtime has to be paid double the rates of wages. In my opinion, the award is of cancelling the circular and, therefore, repurcation of such cancellation will have to be borne in mind that the employees are entitled for overtime wages.

24. The subsequent submission points out that the overtime has contemplated under Factories Act and Shops and Establishments Act clarifies that if the employees is required to work more than 48 hours, he is expected to be treated has worked for overtime and required to be paid overtime wages. It has been submitted that the employees has nowhere made out a case that the employees were required to work more than 40 hours. In my considered opinion, the facts on record are very clear that the employees have already worked on Saturdays which clearly indicates that for 8 hours a week, they have worked more. For this purpose, the employees do not require to establish anything more. Therefore, I have found that the submissions of the Respondent are not cogent and sufficient to dismiss the complaint filed by the Complainant. With this discussion, I have given my findings to the points accordingly and pass the following order.

Order

(*i*) The complaint is hereby allowed.

(*ii*) It is hereby declared that the Respondents have engaged in unfair labour practice under Item-9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971. They are directed to desist permanently from continuing to follow the said unfair labour practice.

(*iii*) The Respondents are directed to pay wages for having done overtime work on each Saturday from 1st February 1983 till 15th October 1987 at twice the normal rate of wages for the extra work carried out by the employees.

(*iv*) The amount be disbursed amongst the employees within ten weeks from today.

No order as to costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 16th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th September 2002.

IN INDUSTRIAL COURT AT PUNE

APPLICATION (MRTU) No. 3 OF 2001.—Rutugandh Kamgar Sangh, Deccan Gymkhana, Pune, (Through Mr. Rajesh Nikam, President), Office Address, C/o. Mr. Rajesh Nikam, Laxmi Nagar, Survey No. 12-A, Near Anil Provision Stores, Yerawada, Pune-411 006.—*Applicant*—*Versus*—(1) Hotel Rutugandh, (A partnership firm) Through Mr. Rajendra Gandhi, Partner, Address : 638, Deccan Gymkhana, Pune-411 004. (2) Maharashtra Labour Union, (Through Mr. Vasu Nair, President), Office Address, 'Kamgar Bhavan' First Floor, Kakade Arcade, 629, Budhawar Peth, Pune-411 002.—*Non-Applicants.*

In the matter of.—Application under Sec. 11 of the M. R. T. U. and P. U. L. P. Act, 1971, for registration of the Applicant Union as a recognised Union for the Non-Applicant No. 1-Undertaking.

CORAM.— Shri J. L. Deshpande, Member, Industrial Court, Pune.

Appearances.— Shri Rajesh Chandrakant Nikam, President of the Applicant Union, in person.

Shri H. Y. Deo, Advocate for the Non-Applicant No. 1- Hotel-Management/ Undertaking.

Non-Applicant No. 2 Union. *Absent.*

Judgment

(Dictated in the open Court on 6th September 2002.)

1. This is an application under section 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for registration of the Applicant union as a recognised union for the Non-Applicant No. 1 Hotel-Undertaking/Management. Non-Applicant No. 2 is another union. The Applicant union has filed this application on the ground that in the preceding six months to the date of the filing of the present application, the Applicant Union has more than thirty percent of the membership of the employees working in the Non-Applicant No. 1 Hotel. The figures of the total number of the employees and the percentage thereof, are given in the application. According to the Applicant, it has complied with all the required provisions under sections 11 and 19 of the M.R.T.U. and P.U.L.P. Act, 1971, and it is entitled to the recognition certificate.

2. Non Applicant No. 1 Hotel filed its written statement at Exh. C-6 and submitted that it has no objection if the Applicant Union is registered as a recognised union.

3. The Non-Applicant No. 2 another Union did not appear despite service of the notice and was set *ex-parte.*

4. The Applicant was allowed to prove the facts by way of affidavit. Accordingly, the Applicant has filed affidavit of its President Mr. Rajesh Nikam, which is at Exh. U-6. In his affidavit, he had deposed to the compliance of the requirements for registration of the Applicant Union, as a recognised union.

5. Affidavit evidence of the Applicant's President gets support from the report submitted by the Investigating Officer. On going through the contents of the report, it is seen that in the preceding six months membership of the Applicant Union was more than thirty-percent of the employees. It is further seen from the contents of the report that the Applicant Union has complied with the provisions continued is section 19(*i*), (*ii*), (*iii*) and (*iv*) of the M.R.T.U. and P.U.L.P. Act, 1971. In view of those facts, I do not find any impediment to allow the application

and to issue the registration certificate in favour of the Applicant-Union as a recognised union for the Non-Applicant No. 1-Hotel Management/Undertaking, in the prescribed form. Hence the following order.

Order

(*i*) The Application is allowed.

(*ii*) The Applicant Union be registered as a recognised union for the Non-Applicant No. 1 Hotel Management/Undertaking and the certificate to that effect, in the prescribed form, be issued to the Applicant Union.

(*iii*) No order as to the costs.

J. L. DESHPANDE,
Member,
Industrial Court, Pune.

Dated the 6th September 2002.

S. S. BUDHKAR,
Jr. Investigating Officer,
Industrial Court, Pune.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 141 OF 1995.—Shri Laxman Rangnath Bhade, 926, Barge Wada, Gaon Bhag, Sangli.—*Complainant—Versus*—(1) The Superintending Engineer, Public Works Circle, Tarabai Park, Kolhapur—*Respondent No. 1.* (2) The Executive Engineer, Public Works (West) Division, Near Food Godown, North Shivajinagar, Sangli.—*Respondent No. 2.*

In the matter of Complaint u/s. 28(1) read with Items 5, 6 and 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri S. A. Kulkarni, Advocate for the Complainant.
Shri S. R. Pisal, Asstt. Govt. Pleader for the Respondent.

Judgment

This is a Complaint purporting to be under section 28(1) read with Items 5, 6 and 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, Respondent No. 2 appointed the Complainant as a Clerk, for Vita Sub-Division of Sangli District, by order dated 4th January 1985 for 30 days. The orders say that he is appointed on vacant post of Junior Clerk. The Complainant was then again appointed for the period from 8th February 1985 to 9th March 1985 on the same post. He then worked on the post of Clerk, from 14th October 1985 till 17th June 1986.

3. The Complainant then filed Complaint (ULP) No. 204/90 before the Labour Court, Sangli on 3rd May 1990, *inter alia,* contending that he was reverted on the post of Muster Assistant for the period from 11th March 1985 to 13th October 1985 and 18th June 1986 to 31st August 1989 and then illegally reverted from 1st September 1990. Pending the complaint, he got the plea deleted regarding reversion on the post of Muster Assistant and working on such post. He contended that he continued to work on the post of Clerk.

4. Learned Labour Court made interim order below his Application (Exh. U-2) in said complaint directing present Respondent No. 2 to allow the complaint to work on the post of Clerk,. Present Respondent No. 2, as per directions of learned Labour Court allowed the Complainant to work on the post of Clerk, by his letter dated 15th March 1993 and issued conditional appointment order on 17th March 1993 that his appointment as Clerk, is subject to decision of labour Court. Thus, the Complainant is working as a Clerk, since then.

5. Present Respondent No. 2 contested Complaint (ULP) No. 204 of 1990 on the grounds that the Complainant was temporarily appointed on the post of Muster Assistant and the appointment came to an end on closure of Employment Guarantee Scheme. It is not necessary to refer pleadings therein, in this complaint.

6. Learned Labour Court allowed above complaint on 29th August 1994 holding that Complainant's termination is in violation of provisions of Section 25-F of the Industrial Dispute Act and directed reinstatement with continuity of service and full back wages. It observed that the controversy regarding the post or designation on which the Complainant was working is beyond its jurisdiction, kept open and the Complainant can raise that dispute before a competent forum. After above decision, present Respondent No. 2 cancelled his order dated 17th June 1993 appointing the Complainant on the post of Clerk,, *vide* order dated 23rd March 1995.

7. The Complainant then filed this complaint *inter alia* contending that he is working on the post of Junior Clerk, from January 1985 onwards, worked on the post of Clerk, till 31st August 1989 and then was orally terminated. He was then reinstated on the post of Junior Clerk, in March, 1993 and is working on such post since then. Now, the Respondents are going to revert him illegally on the post of Muster Assistant. In fact, he never worked as Muster Assistant at any time. Duties and pay scales of a Junior Clerk and a Muster Assistant are altogether different. A Junior Clerk is entitled to basic pay of Rs. 950 per month where as

a Muster Assistant of Rs. 750 per month. Junior Clerks are not required to work on various projects whereas a Muster Assistant is. Respondent No. 2's order dated 23rd March 1995 reverting him on the post of Muster Assistant is not served upon him. Proposed reversion is an unfair labour practice.

8. It is further alleged that the Respondents ought to have paid wages of the post of Clerk from May, 1990 onwards as per decision in Complaint (ULP) No. 204 of 1990 as well as order in Revision (ULP) No. 171 of 1994 preferred by Respondent No. 2 in this Court, challenging decision dated 29th August 1994.

9. On above averments, the Complainant has prayed for requisite declaration of unfair labour practice, direction to confer benefits of permanency in the post of Junior Clerk, on him on completion of probation period of 90 days from 8th January 1985, to set aside his reversion on the post of Muster Assistant and permanently restraining the Respondent from reverting him from the post of Junior Clerk, also to set aside orders appointing him on the post of Muster Assistant during the period from 4th January 1985 to 31st August 1989 and other consequential reliefs.

10. Respondents 1 and 2 filed their written statement at Exh. C-4 and traversed all material allegations made by the Complainant. The contended that the complainant was appointed on the post of Junior Clerk for the period 8th February 1985 to 9th March 1985 and 14th October 1985 to 17th June 1986. Government of Maharashtra then implemented Zero Budget Scheme from June 1986. The Complainant then was appointed on the post of Muster Assistant and worked as a Muster Assistant. His appoint as such came to an end on 31st August 1989. Even then he filed Complaint (ULP) No. 204/90 before the Labour Court, Sangli wherein an interim order was passed that he should be allowed to join duties as Junior Clerk. Revision Application filed against said order was dismissed and, therefore, the Complainant was conditionally appointed on the post of Junior Clerk from 15th March 1993 as per orders of Labour Court. The Complainant never worked on any post from 1st September 1989 till 14th March 1993. It is held in decision of Complaint (ULP) No. 204/90 that the Complainant has admitted in letter dated 2nd January 1990 (Exh. U-23) that he worked as Muster Assistant till August, 1990. In fact, the Complainant was originally appointed as a Muster Assistant. Post of Junior Clerk is a Class-III post is to be filled in through Regional Selection Board and they (Respondent) have no authority to directly appoint any person on the post of Junior Clerk. The Complainant was brought on his original post by order dated 23rd March 1995 after decision of Labour Court in Complaint (ULP) No. 204/90 and the same is not at all reversion. Eventually, the complaint is not entitled to permanency on the post of Junior Clerk and benefits thereof of such post.

11. In short, it is case of the Respondents that the Complainant was appointed on the post of Muster Assistant on 18th June 1986, worked on said post till 31st August 1989. He was conditionally appointed on 15th March 1993 on the post of Clerk as per interim order of labour Court in Complaint (ULP) No. 204/90 and that too subject to decision of Labour Court. Thereafter, he is brought to his original post *vide* order dated 23rd March 1995. Said order is not reversion at all and is not a unfair labour practice. Finally, the Respondents justified their action and prayed for dismissal of the complaint.

12. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant prove that he was appointed on the post of Clerk from 4th January 1985 till 31st August 1989 and is deprived of the status and privileges of said post ?

(*ii*) What is the effect of Respondent No. 2 order dated 17th July 1993 appointing the Complainant on the post of Clerk from 15th March 1993 ?

(*iii*) Does the Complainant prove that Respondent No. 2's order dated 23rd March 1995 amounts to his reversion ?

(*iv*) Does the Complainant prove that the Respondents have engaged in unfair labour practice under Items-5, 6 and 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?

(*v*) What order ?

13. My findings on above points, are as under :—

(*i*) No, He was appointed as a Clerk only from 8th January 1985 to 9th March 1985 and 14th October 1985 to 17th June 1986.

(*ii*) It is conditional one and as per interim order passed by Labour Court, in Complaint (ULP) No. 204/90.

(*iii*) No,

(*iv*) No,

(*v*) The Complaint is dismissed.

Reasons

14. It needs to be stated at the beginning itself that present Respondent No. 2 who was sole Respondent in Complaint (ULP) No. 204/90 preferred Revision Application No. 53 of 1990 before this Court challenging legality of order passed below Exh. U-2 in said complaint directing him to allow the Complainant to work on the post of Clerk, till decision of main complaint. My learned Predecessor then stated interim order of Labour Court directing to deposit wages of the Complainant until further orders. Accordingly, Rs. 21,372 are deposited in Labour Court. Ultimately, Revision Application (ULP) No. 53/90 was dismissed on 4th March 1993. Thereafter, the Complainant was employed on the post of Junior Clerk from 15th March 1993 until further orders or till decision of Labour Court, Sangli, whichever is earlier. Present Respondent No. 2 then cancelled order appointing the complaint on the post of Clerk, on account of decision in Complaint (ULP) No. 204 of 1990 by Labour Court, Sangli.

15. The Complainant has filed order dated 4th January 1985 appointing him on the post of Clerk, for 30 days, order dated 17th July 1993 appointing him on the post of Clerk, as per interim order of the Labour Court and order dated 23rd March 1995 cancelling the appointment order dated 17th July 1993 on account of decision of Labour Court. He then further produced Government resolution dated 24th January 1990 and other correspondence. He also produced a chart about his due and drawn pay as well as difference thereof. He then filed his Affidavit (Exh. U-16) in support of his claim.

16. Learned Assistant Government pleader representing the Respondents cross examined the Complainant and produced 36 orders whereby the Complainant was appointed from time to time on the post of Muster Assistant for the period from 11th March 1985 to 13th October 1995 and 18th June 1986 to 31st August 1989. He did not lead oral evidence. No Musters of work projects on which the Complainant is alleged to have worked were produced.

17. On perusal of various appointment orders of the Complainant, it is crystal clear that he was appointed as a Junior Clerk for the period from 8th February 1985 to 9th March 1985 and 14th October 1985 to 17th June 1986. Remaining appointment orders say and show that he was appointed on the post of Muster Assistant for the period from 11th March 1985 to 13th October 1985 and 18th June 1986 to 31st August 1989.

18. The Complainant has affirmed in the affidavit (Exh. U-16) that the Respondents are governed by Industrial Employment (Standing Orders) Act 1946. He worked on the permanent post of Junior Clerk from 8th January 1985 to 31st August 1989 and thus is entitled to permanency on completion of probation period of 90 days.

19. The Complainant preferred to file common written arguments (Exh. U-30 and U-31) for this complaint as well as for Revision Application (ULP) No. 142 of 1995. The Respondents also filed common written arguments (Exh. C-8).

20. It is submitted on behalf of the Complainant that the Respondents have not produced Musters of work projects whereon the Complainant is said to have worked as Muster Assistant. On the contrary, the Complainant was appointed on permanent vacant post of Junior Clerk, as per order dated 4th January 1985. Proposal is sent to Respondent No. 1 regarding Complainant's permanency on the post of Clerk. Therefore, it cannot be said that the Complainant has worked as Muster Assistant.

21. The Complainant has come with two fold contentions. Firstly, according to him, he was permanently appointed on the post of Clerk and then is illegally reverted by order dated 23rd March 1995. He has further pleaded that order of Labour Court is immaterial as the controversy regarding the post on which he is appointed is kept open.

22. Complainant's orders for the period from 18th June 1986 to 31st August 1989 clearly spell that he was appointed afresh as Muster Assistant. It is nowhere stated in any of the orders that he is reverted on the post of Muster Assistant. Admittedly, he has worked as a Clerk previously from 14th October 1985 to 17th June 1986. He has made an application dated 2nd January 1990 (Exh. U-23) of Complaint (ULP) No. 204/90 that Government of Maharashtra adopted Zero Budget Scheme in June, 1986. Thus, the record show that then he was appointed afresh as a Muster Assistant. It implies that he waived his alleged right of continuation and permanency on the post of Junior Clerk. He has nowhere protested when appointed afresh from 18th June 1986 as Muster Assistant. Therefore, it cannot be accepted that he was reverted on the post of Muster Assistant. It has also come on the record that in the past, he was appointed on the post of Muster Assistant for the period from 11th March 1985 to 31st October 1985. At that time also, he has nowhere protested that he is reverted on the post of Muster Assistant. Doing work of Clerk is one thing and appointment on the post of Muster Assistant but doing work of Clerk is another thing. The Complainant has replied in the cross examination that his 36 appointment orders say that he is appointed as a Muster Assistant. He has explained further that he worked as Junior Clerk despite of such appointments. I must make is clear that it is absolutely not case of the Complainant that he was appointed on the post of Muster Assistant but doing work of Junior Clerk and hence is entitled to wages of the post Clerk. However, he has stickled to the plea that he was appointed on the post of Clerk. At the costs of repetition, I say that he has waived and abandoned his alleged right of permanency or on the post of Junior Clerk by accepting fresh appointment on the post of Muster Assistant. Therefore, in the eyes of law he is appointed on the post of Muster Assistant only.

23. To explain it further nature of work done by him cannot upgrade or promote the post on which he is appointed. In fact, the Complainant was appointed a fresh on the post of Muster Assistant and then he started working by accepting such order. Consequently, it cannot be accepted that he was deprived of the right of permanency on the post of Junior Clerk. On the contrary, he himself surrendered his alleged accrued rights. Accordingly, I answer Point No. 1 in the negative.

24. As discussed above, Labour Court made an interim order (below Exh. U-2) in Complaint (ULP) No. 204/90, till decision of said complaint. Revision Application (ULP) No. 53/90 challenging said order was dismissed by this Court on 4th March 1993. Eventually, Respondent No. 2 appointed the Complainant on the post of Clerk from 15th March 1993. Said order is produced by the Complainant himself with list Exh. U-4/3. It is specifically stated in that such appointment *i. e.* on the post of Junior Clerk is until further orders or till decision of Labour Court, Sangli, whichever is earlier. In the light of discussion and finding on Point No. 1 above, it cannot be said that the Complainant was permanently appointed on the post of Junior Clerk from 15th March 1993. In fact, said order was conditional one and as per interim order passed in Complaint (ULP) No. 204/90. Learned Labour Court while deciding said complaint finally, has observed that the Complainant was working as Muster Assistant but kept the controversy regarding his appointment open. As such, Respondent No. 2's order dated 17th July 1993 does not and cannot confer permanency upon the Complainant for the post of Junior Clerk. In fact, the same was as per interim order passed by the Labour Court and in force till decision of main complaint. I answer Point No. 2 accordingly.

25. It is not necessary to repeat discussions on the Point No. 1 above. Suffice to say that the Complainant was appointed afresh on the post of Muster Assistant although appointed in the past on the post of Junior Clerk. Order dated 23rd March 1995 in the eyes of law brings the Complainant to original post *i. e.* Muster Assistant on which he was appointed. Consequently, the same cannot be held to be reversion. Accordingly, I answer Point No. 3 in the negative.

26. In the light of above discussions and finding on the Point No. 1 above, it cannot be accepted that the Respondents showed favouritism or partiality to other employees as well as deprived the Complainant from benefits of permanency for the post of Junior Clerk. The Complainant was appointed afresh as Muster Assistant, then conditionally appointed from 15th March 1993 on the post of Clerk and brought to original post after decision of labour Court. It does not amount to reversion, as alleged. I, therefore, hold that the Complainant has failed to prove alleged unfair labour practice. Accordingly, I answer Point No. 4 in the negative.

27. To summarise, the Complainant was initially appointed on the post of Clerk. Government of Maharashtra then adopted zero budget scheme. He was then appointed afresh on the post of Muster Assistant. He never protested against it and thus waived and abandoned his right of permanency in the post of Junior Clerk. All orders clearly establish that he was appointed on the post of Muster Assistant. He admits such position. It is not at all his case that he is appointed on the post of Muster Assistant but doing work of Junior Clerk. Therefore, non-production of Muster rolls of various works projects is of no held to prove that he was appointed on the post of Junior Clerk. Assuming for a moment that he was doing work of a Junior Clerk, it does not mean that he was appointed on such post. His appointment as Muster Assistant will prevail despite nature of duties performed by him. Consequently, now he cannot claim permanency on the post of Junior Clerk. As such, the complaint is liable to be dismissed.

28. Before parting with this order. I must make it clear that the Complainant has worked on the post of Junior Clerk from 15th March 1993. He replied in the cross examination that he is working as a Junior Clerk, by virtue of Court's order. As such, he is entitled to wages in a scale of the post of Junior Clerk for the period for which he worked legally as well as by virtue of Labour Court's order on said post. The Respondents are directed to pay wages to him in the scale of post of Junior Clerk for such period.

29. Finally, I pass the following order :—

Order

(*i*) The Complaint is dismissed.

(*ii*) The Respondents are directed to pay wages to the Complainant in pay scale of Clerk for the period for which he worked legally as well as by virtue of interim order passed by the Labour Court on the post of Junior Clerk.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 380 OF 1997.—Sou. Ratnamala Ramdas Late, At post : Khareghat Road, Ratnagiri—*Complainant. Versus*—(*1*) The Joint Director, Health Services (Health), Central Building, Pune-1—*Respondent No. 1.* (*2*) The Civil Surgeon, Civil Hospital, Ratnagiri, District Ratnagiri.—*Respondent No. 2.* (*3*) Smt. J. V. Borkar.—*Respondent No. 3.*

In the matter of Complaint u/s. 28(1) read with items 3, 5, 9 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. N. Patil, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Govt. Pleader for the Respondent Nos. 1 and 2.

Judgement

This is a Complaint purported to be under Items 3, 5, 9 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Complainant joined Health Department of Government of Maharashtra in December, 1977 as staff nurse at Bombay. She was promoted in the year 1989 on the post of Sister Tutor and transferred to Civil Hospital, Ratnagiri in the year 1989. Respondent No. 1 *i. e.* Joint Director, Pune is her Appointing Authority. Respondent No. 1 made an order on 23rd October 1997 transferring her from Ratnagiri to Dhule and simultaneously transferred one Smt. Borkar (Respondent No. 3) from Dhule to Ratnagiri. Transfer of Respondent No. 3 was made on her request.

3. The Complainant then filed above complaint on 28th October 1997 *inter alia,* contending that one Smt. Lavelekar is working at Ratnagiri as Nurse Tutor from the year 1978, is senior to her but is no transferred. She (Complainant) is transferred only to accommodate Smt. Borkar. Besides, the transfer is mid-term transfer. It was therefore, alleged that her transfer is an unfair labour practice. Consequently, she prayed for requisite declaration and direction and other consequential reliefs.

4. The Complainant made in application (Exh. U-2) alongwith the complaint for interim relief whereon, my Learned Predecessor made *ex-parte* order directing the Respondents to temporary withdraw Complainant's transfer order, with notice. Eventually, Respondent No. 1 issued revised orders on 5th November 1997 and re-transferred the Complainant to Ratnagiri from Dhule and Smt. Borkar from Ratnagiri to Dhule.

5. Respondent Nos. 1 and 2 filed their written statement at Exh. C-4 contending at the outset that the Complainant is not a workman as defined under the Industrial Dispute Act and hence cannot resort to provisions of M.R.T.U. and P.U.L.P. Act.

6. It is case of the Respondents that the Complainant was working at Ratnagiri from the year 1989, completed normal tenure of 5 years, was liable to be transferred on administrative and is transferred on administrative grounds. There are no *malafides* whatsoever in the transfer. They have to consider requests of employees who are on the waiting list of transfer for years together. According to them, Complainant's transfer is on administrative grounds. Thus, they justified the transfer and prayed for dismissal of the complaint.

7. My Learned Predecessor, after hearing both parties, rejected interim application (Exh. U-2) on 20th January 1998. Eventually, the Complainant came to be relieved in March, 1998. Respondent No. 1 then made an order dated 8th September 1998 transferring Smt. Borkar from Dhule to Ratnagiri.

8. Smt. Borkar, appeared *suo-moto* on 20th January 1998 for arraying her as Respondent No. 3. It was allowed on 4th May 1999 and the Complainant arrayed her as Respondent No. 3. However, Respondent No. 3 failed to file her written statement nor produced her alleged representation/application requesting to transfer her from Dhule to Ratnagiri.

9. Now following points arise for determination :—

(*i*) Whether Complainant has proved that her transfer is *malafide* as contemplated under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act ?

(*ii*) What order ?

10. My findings, on above points are as under :—

(*i*) Yes.

(*ii*) The Complaint is allowed.

Reasons

11. Although, the Complainant alleges unfair labour practice under Items 3, 5, 9 and 10 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, no case is made out regarding Items 5, 9 and 10. Government guidelines regarding transfer of employees are directory one. Therefore, no points regarding unfair labour practice under Items 5, 9 and 10 are framed.

12. The Complainant examined herself on oath at Exh. UW-1. She made an application at Exh. U-11 to direct Respondents 1 and 2 to Produce VIP Note dated 4th September 1998 sent by Health Minister to Respondent No. 1 and request application of Respondent No. 3 for transfer and other documents. Learned Assistant Government Pleader endorsed that the Respondents are already informed to produce requisite documents. Thereafter, Respondent Nos. 1 and 2 were directed to produce VIP Note of Health Minister and Respondent No. 3 application, in this Court *vide* order dated 26th June 2001. However, none of those documents are produced till today nor any explanation is given for its non-production. Respondents 1 and 2 produced transfer order of Respondent No. 3 dated 8th September 1998 and relieving order of the Complainant. They did not lead oral evidence.

13. The Complainant deposed that Respondent No. 3 worked at Dhule for 22 months only and she (the Complainant) is transferred to Dhule only to accommodate Respondent No. 3. She replied that she is liable to be transferred after serving for 5 years at one place but denied that her transfer is on administrative grounds. Her transfer order says that she is transferred on administrative ground.

14. Shri D. N. Patil, Learned Advocate representing the Complainant vehemently argued that Respondent No. 1 purposely did not produce VIP Note of Health Minister and therefore, adverse inference has to be drawn against Respondent No. 1. Besides, Respondent No. 2 has neither filed her written statement nor produced application for request transfer. He conceded that *bonafide* transfers on administrative grounds are justifiable but added that this is a mid-term transfer and there were no exigencies. The Complainant was made a scope goat simply to accommodate Respondent No. 3 and that too by the directions of the Minister. Had there been no directions of the Minister, the Complainant would not have been transferred. Even otherwise, there is nothing on record to justify necessity. The Complainant alone is signalled out. All such circumstances categorically established that the transfer is *malafide* one. It is solely on account of political interference. In support of his arguments be placed reliance on following decisions :—

(*i*) *Yogesh Kumar and Another* V/s. *State of Rajasthan (1992 I CLR at page 41) (Raj. H. C.) ;*

(*ii*) *Bhanu Pratap Mishra* V/s. *Secretary, Minor Irrigation and Rural Engg. Services, U. P. and Another (1998 II CLR at page 8 Allahabad. H. C.) ;* and

(*iii*) *Jagvir Singh Talan* V/s. *State of U. P. and Others reported in 1998 Lab. I. C. 195, Allahabad H. C.*

15. Learned Assistant Government Pleader Shri Pisal replied that Complainant's transfer order says that it is made on administrative grounds. Transfer is an incident of service, right of Respondent No. 1 and is not *malafide* one. He placed reliance on the decision in *State of Madhya pradesh* V/s. *S. S. Kaurav reported in 1995 (III) S. C. cases at page 270.*

16. In State of M. P. *V/s.* S. S. Kaurav it is held that the Courts and Tribunals are not valid forum to decide transfers on administrative grounds and administrative decision will stand unless they are vitiated either by *malafides* or extraneous consideration without any factual background of foundation.

17. It is not case of Respondent No. 1 that many administrative transfers were made even during midterm. In fact, the Complainant alone is transferred and that too on request of Respondent No. 3. It is not case of Respondent No. 1 that the Complainant was due for transfer and hence was transferred. Therefore, the period for which the Complainant worked at Ratnagiri is of no help to Respondent No. 1. Thus, it can will be said that the Complainant was transferred only due to request of Respondent No. 3. Surprisingly her request application if any is not produced on record. There is also nothing on record to show administrative exigencies to transfer the Complainant from Ratnagiri to Dhule. Learned Asstt. Government Pleader was unable to convince as to what was the administrative convenience for which the Complainant was transferred. All such facts coupled with VIP Note of Health Minister are self eloquent. Non-production of said note despite specific order thereof, establishes that same is incriminating or goes against Respondent No. 1 and hence nor produced. As such, there is sufficient material on record to show that the transfer is actuated by Minister's interference and there was no administrative exigencies. It cannot be accepted that it was in public interest.

18. *Malafides* mean mis-use of powers in bad faith. Present is not a routine transfer. There is no evidence nor pleadings as to what were the administrative exigencies for transferring the Complainant. On the contrary, the order clearly says that the same is due to request of Respondent No. 1. I, therefore find that the Complainant is transferred so as to accommodate Respondent No. 3. It has also come on the record that Respondent No. 3 was transferred after decision of interim application (Exh. U-2) as per VIP Note of Health Minister and copy of transfer order is sent to Personal Assistant of Health Minister. All above circumstances prove that the transfer is *malafide* under guise of following management policy and for extraneous consideration. Therefore, decision in *State of M. P.* V/s. *S. S. Kaurav* is of no help to Respondent No. 1. Accordingly, I answer Point No. 1 in the affirmative.

19. It consequently follows that Respondent No. 1 has engaged in an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act and the transfer is liable to be withdrawn. However, I make it clear observations made here in above, and affirmative finding recorded is restricted to the impugned transfer only.

20. To conclude, I pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 is engaged in an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. The Respondent is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iii*) Respondent No. 1 is further directed to withdraw Complainant's transfer order dated 23rd October 1997 on or before 30th June, 2002.

(*iv*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 312 OF 1994.—Shri Yeshwant Laxman Pawar, At post : Kavaji Khotwadi, Tal. Miraj, Dist. Sangli.—*Complainant. Versus*—(*1*) The Executive Engineer, Sangli Irrigation Division, Warnali, Vishrambag, Sangli.—*Respondent No. 1.* (*2*) The Sub-Divisional Engineer, Irrigation Sub-Division, At Post and Tal. Tasgaon, District Sangli.—*Respondent No. 2.* (*3*) The Sectional Officer, Irrigation Section, At Post and Tal. Tasgaon, District Sangli.–*Respondent No. 3.*

In the matter of Complaint u/s. 28(1) read with Items 3, 5, 6 and 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri S. A. Kulkarni, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Govt. Pleader for the Respondent Nos. 1 and 3.

Judgement

This is a Complaint under section 28(*1*) read with Items 3, 5, 6 and 9 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Complainant was appointed by Respondent No. 1 as a Patkari on 15th October 1979 for a period of 90 days. He then worked from time to time, with some breaks till 20th February 1982. He was then terminated. Eventually, Government made Reference (IDA) No. 4/83 to Labour Court, Sangli for an adjudication of industrial dispute between present Respondent No. 1 and the Complainant. It came to be allowed on 20th February 1985 by setting aside Complainant's termination and present Respondent No. 1 was directed to reinstate the Complainant with 50% back wages from 18th April 1993 onwards till the date of actual reinstatement. It was also held that Complainant's services be treated as continuous.

3. Respondent No. 1 then issued an order dated 23rd May 1985 appointing the Complainant on the post of Patkari from 18th April 1993 and directed to pay compensation of 50% back wages from 28th April 1983 till actual resumption of duty by the Complainant. Eventually, the Complainant resumed duties on 10th June 1985.

4. The Complainant then filed Complaint (ULP) No. 128 of 1985 before Labour Court, Sangli alleging that he was terminated by present Respondent No. 1 with effect from 30th June 1985. Respondent No. 1 contested said complaint. In the mean time, the Complainant was appointed on the post of Choukidar by order dated 23rd June 1987. The Complainant then worked as Choukidar. Complaint (ULP) No. 128/85 was allowed on 22nd February 1989 directing Respondent No. 1 to reinstate the Complainant on the post of 'Patkari' with continuity of service and full back wages after deducting wages paid to him for the post of Choukidar.

5. Present Respondent No. 1 challenged above order *vide* Revision (ULP) No. 15/89 before this Court which came to be dismissed on 26th October 1993. But the Complainant was not reinstated on the post of Patkari.

6. The Complainant then was transferred on the post of Choukidar at Anjani Tank, was relieved on 12th August 1994 and was directed to join at the transferred post.

7. This complaint was then filed on 18th August 1994 *inter alia* contending that the Complainant was reverted on the post of Choukidar in violation of orders in Complaint (ULP) No. 128 of 1985 and Revision Application (ULP) No. 15/89. In fact, the Complainant ought to have been reinstated on original post of Patkari with full back wages and continuity of service. It is further alleged that the Complainant filed Criminal Complaint (ULP) No. 5/94 for non-implementation of decision in Complaint (ULP) No. 128 of 1985 and, therefore, he is reverted to take revenge. Besides, he cannot be transferred in violation of division in Complaint (ULP) No. 128/85.

8. It is further alleged that he is not given annual increments and rise in pay scales as per the Award in Reference (IDA) No. 4/83. Other employees working as Patkari are retained on same post but the Complainant alone is reverted. According to the Complainant, therefore, the Respondents have engaged in unfair labour practices under items 3, 5, 6 and 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

9. On above averments, the Complainant prayed for requisite unfair labour practice, direction to confirm permanency upon him on the post of Patkari on completion of 90 days probation period from the date of joining and to pay all monetary benefits.

10. Respondent Nos. 1 to 3 filed their written statement at Exh. C-7. They contended that post of Patkari was abolished by the Government in the year 1982, then the Complainant accepted post of Choukidar, worked on such post for a long period and now cannot raise a grievance about the same. Irrigation Scheme are transferred to Shetkari Sahakari Sakhar Karkhana Ltd., Sangli. Thus, now the Complainant cannot be appointed on the post of Choukidar. Thus, the Respondents justified their action and prayed for dismissal of the complaint.

11. Present Respondent challenged both orders *i.e.* of Complaint (ULP) No. 128/85 and Revision Application (ULP) No. 15 of 1989, *vide* Writ Petition No. 3934 of 1994 before the Hon'ble High Court. Interim relief prayed therein was refused on 12th December 1994 and the Writ Petition was expedited. The same is still pending. I must state here itself that present Respondent No. 1 did not challenge Award passed in Reference (IDA) No. 4/83 but implemented the same by passing order dated 23rd May 1985.

12. The Complainant made an application (Exh. U-2) alongwith Complaint under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act. My Learned Predecessor after hearing both parties directed the Respondents to seek sanction of the Government to post the Complainant as Patkari within 2 months, post him as Patkari and restrained them from implementing his transfer order, till decision of main complaint. Respondent No. 1 in the background of decision in Complaint (ULP) No. 128 of 1985, Revision Application (ULP) No. 15/89 and refusal of stay in Writ Petition No. 3934 of 1994, appointed the Complainant on the post of Patkari from 21st July 1985 subject to decision in the Writ Petition. Thus, now Complainant's transfer is immaterial and question of unfair labour practice under item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act does not survive. Question of favouritism is also immaterial. Eventually, question of alleged unfair labour practice under items 6 and 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act only survives.

13. In the background of above later developments following points arise for my determination :—

(*i*) Does the Complainant prove that the Respondents have engaged in unfair labour practice under Items 6 and 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?

(*ii*) What order ?

14. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Complaint is partly allowed.

Reasons

15. The Complainant produced with list Exh. U-4 copy of judgments in Complaint (ULP) No. 128/85 and Revision Application (ULP) No. 15/89 and orders transferring him at Anjali Tank. He then produced with list Exh. U-14, copy of Award in Reference (IDA) No. 4/83, statement showing details of allowance due, drawn and difference. He then produced with list Exh. U-19 order to pay difference of Patkari's post from 18th April 1983 onwards and order appointing him on the post of Patkari with effect from 21st July 1985. He did not lead oral evidence.

16. In rebuttal, the Respondents produced copies of various orders which were already produced by the Complainant. They did not lead oral evidence.

17. As regards plea of reversion on the post of Choukidar now the same does not survive as the Complainant is appointed on the post of Patkari with effect from 21st July 1985. The date of his continuity is in dispute.

18. Both sides preferred to file written arguments.

19. It has come on the record that previously the Complainant was appointed on the post of Patkari with effect from 18th April 1983 as per Award in Reference (IDA) No. 4 of 1983 (The date of his continuity is in dispute). Later on, he is paid difference of wages for the post of Patkari with effect from 18th April 1983.

20. It is submitted on behalf of the Complainant that provisions of Industrial Employment (Standing Orders) are applicable to the Respondents, the Complainant became permanent on completion of 90 day's probation period and the Kalelkar Settlement cannot fix longer probation period. In addition, the Complainant is entitled to permanency with effect from 15th October 1979 and not 18th April 1983. For that purpose reliance is placed on the decision in *Executive Engineer, Yavatmal* V/s. *Anant Murathe and others* reported in *1999 I LLN at page 155* and *Indian Tobacco Co. Ltd.* V/s. *Industrial Court* reported in *1990 I LLN at page 206.* It is further canvassed that an employee becomes permanent on completion of 240 days of service by placing reliance on the decision in *Burroghs Welcome (I) Ltd., Mumbai* V/s. *D. H. Ghosale and Others,* reported in *2001 (2) LLN at page 696.*

21. It was submitted on behalf of the Respondents that the Complainant is paid 50% back wages as per Award in Reference (IDA) No. 4/83 and is appointed as Patkari with effect from 21st July 1985. Earlier order appointing him as Patkari is with effect from 18th April 1983. As such, now the Complainant is not entitled to any relief. It was further submitted that final order in Award Reference (IDA) No. 4/83, no where contemplates continuity.

22. Admittedly, Respondents are governed by provisions of Kalelkar Award. It is observed in paragraph No. 17 of judgment in *Executive Engineer* V/s. *Anant Murahte* (referred *supra*) that Model Standing Orders. But it is further observed that a workman can be made permanent under Model Standing Orders No. 4-C if there is a post. In the present case, the Complainant was appointed as temporary and not against existing vacant post. Eventually, as observed in Anant Murathe's case, the Complainant is governed by Kalelkar Award. It has held in *Maharashtra State* V/s. *M. V. Chalage* reported in *1992 Lab. I. C. at page 748* that working on daily rated establishment in five consecutive years would an entitlement to the benefit of having his post converted to the post of converted regular temporary establishment. In such circumstances, it cannot be accepted that the Complainant is entitled to permanency on completion of 90 days or 240 days. I am respectfully bound by other decisions relied by the Complainant, but those are not applicable here. The Complainant was appointed temporarily not against a clear vacant post and has to resort only to provision of Kalelkar Award.

23. Decision in Reference (IDA) No. 4/83 directed Respondent No. 1 to reinstate the Complainant with 50% back wages from 18th April 1983. Although, final order therein is silent about continuity, it is observed at the end of paragraph No. 7 that Complainant's service be treated as continuous. Eventually, he ought to have been reinstated with effect from 15th October 1979 and not from 18th April 1983. In case of reinstatement and back wages, benefits of revised wages and yearly increments should also enter the calculation of back wages. It is held accordingly in *Goa Bottling Co-operative Ltd.* V/s. *Pradeep Sardesai and Another* reported in *1992 II CLR at page 490.* As such the Complainant is entitled to continuity of service with effect from 15th October 1979 and not from 18th April 1983. Non-compliance of directions of continuity in the Award is an unfair labour practice. As per Kalelkar Award daily rated workman working for 5 consequtive years irrespective of number of days of actual working rendered in each of said 5 years, would be entitled to be converted on regular temporary establishment. The Complainant joined on 15th October 1979. He is ordered to be reinstated in service with

continuity in Award of Reference (IDA) No. 4/83. As such, he is entitled to be converted on regular temporary establishment on completion of 5 consequtive years from 15th October 1979. There is nothing on record to show that a proposal is forwarded for converting him on converted regular temporary establishment. Thus, keeping him temporary after completion of 5 years service is an unfair labour practice under items 6 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Likewise, his reinstatement with effect from 18th April 1983 instead of 15th October 1979 is against decision in the Award and is an unfair labour practice under item-9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer Point No. 1 in the affirmative.

24. It is my bounded duty to state that Writ Petition No. 3934 of 1994 is pending in the Hon'ble High Court and the Complainant is bound by final decision therein.

25. To conclude, I pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1 has engaged in an unfair labour practice under items 6 and 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*)Respondent No. 1 is directed to take the Complainant on the post of Patkari on Converted Regular Temporary Establishment on completion of 5 years from 15th October, 1979.

(*v*) Respondent No. 1 is further directed to count Complainant's service from 15th October 1979 while taking him on Converted Regular Temporary Establishment, as above and pay difference of wages in such manner.

(*iv*) Parties to bear their own costs.

Kolhapur,
Dated the 19th June 2002.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

BEFORE SHRI C. A. JADHAV, MEMBER,

REVISION APPLICATION (ULP) No. 8/1999.—The Branch Manager, South Eastern Roadways, 616-E ward, Shahupuri 1st lane, Near Jain Mandir, Kolhapur—*Petitioner* (*Original Respondent*). *Versus* Shri Kamaleshkumar Kailashnath Pandye, 1137, A ward, Behind Gandhi Putala, Dhere Building, Shivaji Peth, Kolhapur—*Opponent* (*Original Complainant*) and The Judge, Labour Court, Kolhapur.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri R. G. Rane, Advocate for the Petitioner.

Shri Y. G. Salokhe, Advocate for the Opponent.

Judgement

(Dated the 17th June 2002)

This is a revision by original Respondent No. 1—employer challenging legality of Order passed below Exh. U-2 in Complaint (ULP) No. 283/1998 whereby he is directed to temporarily allow his employee—original Complainant to resume duties on his usual post or, in the alternative pay 50% monthly wages, till decision of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as ' the Complainant ') was working under present Petitioner (hereinafter referred to as ' the Respondent No. 1 ') as Operation Assistant from 1st July 1997. He filed above complaint alleging that he applied for leave on 1st July 1998 for 30 days, then proceeded on leave and reported on 1st August 1998 for resuming duties alongwith medical certificate to Respondent No. 1, however, was not allowed to join duties. On the contrary, he was asked to meet Zonal Manager at Mumbai (Respondent No. 3) who did not allow him to join duties. It was, therefore, alleged that he was orally terminated by engaging in an unfair labour practice. Interim relief application (Exh. U-2) was filed alongwith the complaint.

3. All the Respondents contested the complaint contending that Complainant's performance was far from satisfactory. He used to work in his brother's shop and used to be absent on duties. His leave application was not sanctioned, even then, he proceeded on leave from 17th November 1997 to 18th December 1997. Later on he was absent from 15th June 1998. Eventually, it was presumed that he has abandoned the services. In addition, he has not worked for 240 days in the span of 12 months. Zonal Manager confronted him about attending his brother's shop, he then demanded monetary compensation for submitting resignation but the Zonal Manager refused such unlawful demand. Eventually, he threatened the Zonal Manager. In fact, the contract of employment was temporary and was determined on account of his absence from 15th June 1998. Thus, the Respondents justified their action.

4. Learned Labour Court, after hearing both parties *prima facie* held that Complainant's termination without enquiry and without complying mandatory provisions under Sec. 25-F of the Industrial Dispute Act, 1947 is an unfair labour practice. It then allowed application (Exh. U-2) as above *vide* order dated 8th December 1998. The same is challenged in this revision.

5. I heard both Advocates. Considering rival submissions following points arise for my determination :—

(*i*) Whether impugned order directing interim temporary reinstatement or, alternative payment of 50% monthly wages is justifiable ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

7. This being a revision application under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, 1971, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether impugned order is justifiable. In other words, whether impugned order is perverse or arbitrary ?

8. Shri Rane, learned Advocate representing original Respondent No. 1 canvassed that Complainant's performance was far from satisfactory, he used to attend his brother's shop and used to remain absent without previous notice. There were only two employees at Ichalkaranji branch and the work suffered a lot. The Complainant did not attend after 15th June 1998 and hence the employment came to an end. Besides, he never worked for 240 days in previous 12 months. In fact, the Complainant is not interested in employment but in compensation. It was refused and hence false complaint is filed.

9. Shri Salokhe, learned Advocate representing the Complainant replied that plea of abandonment of service is totally afterthought. Moreover, the Complainant had been to the Zonal Manager but he was not allowed to join duties. Termination without enquiry is an unfair labour practice. Thus, he supported impugned decision.

10. According to Respondent No. 1 himself the Complainant abandoned his service from 15th June, 1998. He was working from 1st July 1997. Thus, he has put in more than 240 days' continuous service in the preceeding 12 months. No show cause notice was issued to him regarding his alleged absentism and abandonment. An enquiry was necessary even in case of abandonment. His termination for non-compliance of provision under Sec. 25-F of the Industrial Dispute Act is *prima facie* bad in law and an unfair labour practice. In any case, the same is effected in breach of the principles of natural justice. Therefore, theory of abandonment is, *prima facie,* unacceptable. Thus, learned Labour Court was well justified in passing impugned order. I do not find any perversity or arbitrariness therein. On the contrary, there is every substance in its reasoning. As such, no interference is called for. Accordingly, I answer Point No. 1 in the affirmative.

11. In the result, I pass following dismissed :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) The Labour Court is directed to decide original complaint as expeditiously as possible.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 17th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 32 OF 2002.—Shri Sanjay Pundlik Mohite, At Post : Talsar, Tal. Chiplun, District Ratnagiri.—*Petitioner*.—*Versus*––Maharashtra State Road Transport Corporation, Ratnagiri Division, Ratnagiri through its Divisional Traffic Superintendent.—*Opponent*.

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. N. Patil, Advocate and B. D. Manolkar, Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgement

This is a revision by original Complainant Conductor challenging legality of judgment and order passed in Complaint (ULP) No. 240/2000 by Labour Court, Kolhapur, whereby, relief to set-aside show cause notice proposing his dismissal is refused, by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter referred to as 'the Complainant') is in service of present Respondent (hereinafter referred to as the State Road Transport Corporation) as a conductor from the year 1989. The Corporation served chargesheet dated 24th March 2000 upon him under Clauses 7(*e*), 7(*j*), 12(*b*), 22 and 32 of its Discipline and Appeal Procedure mainly alleging issuance of tickets of lesser denomination despite collecting proper fare and re-issue of sold tickets while on duty on 17th February 2000 on Chiplun-Gulawade Route. The Complainant denied the charges and then an enquiry took place. The Enquiry Officer held that charges under Clauses 7(*e*), 7(*j*), 12(*b*) and 22 are proved. The Corporation then served show cause notice dated 9th November 2000 as to why she should not be dismissed from service.

3. The Complainant then filed above complaint on 13th November 2000 alleging that the cahrgesheet is false and he never committed alleged misconducts. Domestic Enquiry was simply a farce and Enquiry Officer acted as prosecutor-*cum*-judge. The enquiry is contrary to principles of natural justice and finding of the Enquiry Officer are perverse. In addition, proposed punishment of dismissal is shockingly disproportionate. It is further contended that he is of 35 years old. His both sons are mentally retarded since birth and one of them is serious whereas other died on 13th July 2000. Thus, he is mentally disturbed. He has no other source of income. Consequently, he prayed to set-aside show cause notice of proposed dismissal and permanently restrained the Corporation from taking any action against him on such notice.

4. The Corporation filed its written statement at Exh. C-18 and traversed all material allegations made by the Complainant. It contended that misconducts notices were grave and serious and therefore a chargsheet was served upon the Complainant. The enquiry is fair and proper and principles of natural justice were followed. Findings of the Enquiry Officer are legal one. Proved misconducts are grave and serious. Complainant's past record is not clear and therefore, his proposed dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

5. Parties then went to the trial. The complainant admitted legality of enquiry. The Corporation produced entire enquiry papers and Complainant's default card. No oral evidence was adduced by either of the parties.

6. Learned Labour Court, on perusal of evidence and hearing both parties, firstly held that findings of the enquiry Officer are not perverse. It secondly held that proved misconducts of misappropriation cannot be said to the minor or technical one. It then held that Complainant's past record is not clean and unblemished. Finally, it held that proposed punishment of dismissal is not shockingly disproportionate and dismissed the complaint *vide* judgment and order dated 18th March, 2002. The same is challenged in this Revision.

7. I heard both sides. Considering rival pleadings following points arise for my determination :—

(*i*) Whether finding of labour Court that findings of the enquiry Officer are fair and proper, is justifiable ?

(*ii*) Whether finding of labour Court that proposed punishment of dismissal is not shockingly disproportionate is justifiable ?

(*iii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The Revision Application is dismissed.

Reasons

9. This being a revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

10. It appears on perusal of enquiry papers that the Complainant admitted factual position regarding misconducts in his spot statement. He has explained that he was mentally disturbed. Learned Labour Court, has rightly disbelieved Complainant's plea that he was mentally disturbed and inadvertently issued tickets of lesser denomination as well as re-sold old tickets. I, therefore find that findings of the Enquiry Officer are fair and proper. Accordingly, I answer Point No. 1 in the affirmative.

11. Shri Manolkar, learned Advocate representing the Complainant canvassed that there is marginal misappropriation of Rs. 30 only. Said amount was recovered from the Complainant and there is no actual loss to the Corporation. Even then, proposed punishment of dismissal imposed and it is shockingly disproportionate. The Complainant needs to be extended opportunity to improve himself but learned Labour Court took extreme view.

12. Shri Badadare, learned Advocate representing Corporation replied that there is absolutely, no evidence before the Enquiry Officer as well as Labour Court regarding Complainant's mental condition. The misappropriation is deliberate. The conductor is the only source of income of the Corporation. Amount thereof not material. Proved misconduct is neither minor nor technical one. He placed reliance on the decision of Hon'ble Apex Court in *Janta Bazar* V/s. *Secretary reported in 2000 II CLR at page 568.*

13. Proved misconducts, by any stretch of imagination cannot be said to be minor or technical one. On the contrary, they are serious one. Quantum of misappropriated amount does not matter. It is held in Janta Bazar's case (referred *supra*) that when a misappropriation is proved may be for a large of small amount, there is no question of extending uncalled sympathy and reinstating the Complainant in service. It is also observed that there is no need to consider past record and it is discretion of the employer to consider it in a appropriate case.

14. In the light of dictum of Hon'ble Apex Court, it cannot be said that proposed punishment of dismissal is an unfair labour practice, as alleged. The Complainant was holding post of trust and confidence. His past record is connected with monetary misconducts. In such circumstances, his reinstatement in service will amount to extending misplaced sympathy to him. Thus, the Labour Court has rightly held that proved misconduct is not minor or technical one and rightly dismissed the complaint. Accordingly, I answer Point No. 2 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 8th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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